

METROPOLITAN AREA PLANNING COMMISSION
MINUTES

June 15, 2000

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held Thursday, June 15, 2000, at 1:00 p.m. in the Planning Department Conference Room, 10th Floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Ronald Marnell, Chair; Chris Carraher; Bud Hentzen; Bill Johnson (late arrival); Richard Lopez; Jerry Michaelis; Susan Osborne-Howes; George Platt; Harold Warner, Jr.; and Ray Warren. Frank Garofalo, James Barfield and John W. McKay, Jr., were not present. Staff members present were Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner; Scott Knebel, Senior Planner, Barry Carroll, Associate Planner, and Karen Wolf, Recording Secretary.

RON MARNELL, Vice-Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

Item taken out of order:

2. **DR 99-10** - Wireless Communication amendments to the October 28, 1999 Edition of the Wichita-Sedgwick County Unified Zoning Code as adopted by City Ordinance #44-427 and County Resolution #248-1999 and adoption of the Wireless Communication Master Plan as an element of the Wichita-Sedgwick County Comprehensive Plan.

MARNELL "Scott, would you like to make a brief opening statement. We are going to do the agenda a little different today. We are going to go straight to Item No. 2."

SCOTT KNEBEL, Planning staff "Good afternoon. Item No. 2 on the agenda is the consideration of a Wireless Communication Master Plan for adoption as an element of the Comprehensive Plan for the community and the related amendments to the Unified Zoning Code, in order to implement the recommended changes.

In this presentation today, I am going to go over for you a history of the wireless issue as it has unfolded here in this community. I will basically address why a staff task force was created after the last hearing you had on this item; how that task went about its work. I am going to give an overview of the current regulations just as a reminder for everyone as the starting point that we are coming from, and then I will go over the recommendations that we have before you today and why we think these recommendations are a significant improvement over the system that is in place currently.

As I am sure everyone will remember, the spark that started this process was an application for a communication tower in the College Hill neighborhood. While some may choose to focus on that spark, I think it is important to remember that really the larger issue of the deployment of infrastructure for the wireless service industry is the real issue that we need to address. Having said that, as you will recall, the history of how we got here today is that in July, the City Council passed a moratorium for 6 months that prevented any new towers from being applied for and constructed in the community. The City and County retained Kreines and Kreines to develop a plan which was presented to you back in November of 1999. It was not very well received, and the City and County Managers established a task force of staff members to work with stakeholders on this issue to see if the plan could be modified and improved.

Johnson arrived at the meeting at 1:20 p.m.

The task force was specifically charged to take a look at the consultant's plan and reconsider the impact it has on the wireless communication industry; to meet with the stakeholders and to provide a revised or new plan as appropriate. In order to do this, the task force developed an approach that was designed to include all of the impacted parties to the greatest extent possible. The task force met initially amongst themselves, just staff members to start with a draft with the plan to discuss the concerns that all of the parties involved had addressed at the previous public hearings and informal meetings that had been held with the stakeholders on the issue. We took that information and drafted a matrix of the issues involved and the positions of each of the parties on those issues. With that, we drafted a plan and ordinance revisions to what was prepared by the consultant and reviewed that with the stakeholders, revised it five times, and came up with the final document that you have before you today.

In this approach, we held two rounds of meetings with the stakeholders, which we divided into three groups, one being the wireless service providers--or what most people would call the cellular telephone companies; another being tower developers and roof top managers--those that are in the business of providing towers and other types of structures for lease by wireless service providers; and then the neighborhood association representatives. I also shared these drafts electronically, which was a great assistance, with the stakeholders, and sent them back and forth as we discussed recommended changes.

Before I explain the recommendations that are before you today, I think it is important to review the current requirements of the Unified Zoning Code so that you know where we are today and where we would like to go. Currently, towers are permitted with a Conditional Use in the rural areas, basically the 'SF-20' and the rural residential districts, or by right in the General Commercial and more intensive zoning districts. As far as mounting antennas on other structures other than towers, those are treated as accessory uses, however there is really not anything in the Code that guides staff's decisions on those.

The Code looks to minimize the number of towers by requiring that before you can construct a new tower, the applicant must demonstrate that they cannot locate on an existing tower or other structure. The current Code has limits on color, lighting and signs for towers. It requires co-location for three users on each new tower; requires that towers be rebuilt for additional users if that is necessary in the future; it requires the removal of abandoned towers and towers are also subject to a compatibility height standard, which is quite stringent when they are adjacent to or close to duplexes or single-family zoning.

At the beginning of this process, many in the industry stated that the current system was working fine. We didn't really need to change the current system, that this was a knee-jerk reaction to a single tower. Staff doesn't believe that. We think that the current system has several short-comings and we believe that they are addressed with the recommendations that are before you today. These shortcomings are listed on the slide here. Basically, it limits tower sites, especially in the incorporated area, where General Commercial zoning is required. Then when you do go to that General Commercial zoning, you can end up with unnecessary zone changes, which basically create a commercial zoning district that is created for another purpose, just so you can put another tower there.

If any of the applicants want to modify the development standards, such as the compatibility height standard, a variance is required, which is quite a difficult test to meet. The current system focuses on towers. It assumes that all of the antennas will be placed on towers and really doesn't provide any guidance for how to address issues where towers would be placed on buildings or other types of structures that they are being placed on today. Quite frankly, the Comprehensive Plan does not provide any policy guidance at all, other than to state that low cost utility services should be encouraged in the community.

I will now change my focus and talk about this specific work product that you have before you today. We have developed a Wireless Communication Master Plan and a set of ordinance revisions that will be necessary to implement that plan. What I will go over today basically starts on Page 12 of the Wireless Master Plan. Before that is primarily information about the wireless communication industry as background for you. We have selected this approach of developing a Master Plan, which we feel should be adopted as an element of the Comprehensive Plan, in order to provide the policy guidance that is really not there today.

Specifically, the plan develops policy guidance in six areas. The first is related to location and height, which I will go over in quite a bit of detail in a minute. The second is design guidelines. We will also talk about requirements for structural design and co-location requirements and recommended changes to what is required today. We have a new policy recommendation regarding siting antennas on utility poles and other types of structures that are located in the right-of-way. We have developed a set of submittal requirements which are really not present today, and so most of the applications are kind of hit and miss as to whether or not the material that staff needs to review the application is there or not. And then we have some operational standards which are really more focused on removal requirements of unused facilities.

The location and height guidelines are the heart of the recommended changes that are before you today. It is these location and height guidelines that are shown in the proposed changes to the Unified Zoning Code, and they would be the portion of this Master Plan that actually would be formally adopted in City and County Code. These location and height guidelines provide for greater administrative approval than what is available today, and provide for administrative approval of antennas on or attached or even in existing buildings or on structures, and provide for a 25% height increase of existing

structures if necessary to place antennas on those. To provide for administrative approval of new disguised towers up to 85 feet and for administrative approval of undisguised towers up to 65 feet in any zoning district, and up to 150 feet in the General Commercial and more intensive zoning districts.

They also provide administrative approval to reduce the compatibility height setback to a distance equal to the height of the tower, and if those conditions aren't able to be met for administrative approval, all other applications for towers would be approved for a Conditional Use rather than, in most cases, a zoning change, which is the way it is today. Also, if an application does not meet the design guidelines or the development standards for whatever reason that can be demonstrated by the applicant, those can be waived by the Planning Commission through a Conditional Use.

The new system provides basically the same limits on lighting and signs, although it clarifies the community's position on those. It provides the same co-location and rebuilding requirements, with the exception that the co-location requirements are changed such that only two co-locations are required if a tower is 80 to 100 feet and three if it is over 100 feet. Actually, no co-location is required if a tower is under 80 feet. That is different than today, which requires three co-locations, regardless of the height of the tower.

The removal requirements are modified slightly in that they require partial of removal of towers, as we expect in the future that some towers will be built and their antennas need to be lowered on that tower, and you may have tops of towers that are unused, and those would be required to be removed if they are unused for a period of 12 months. And then we are also looking to avoid the flight paths of our airports. We are encouraging that new wireless communication facilities locate on buildings and camouflage their antennas to look, as much as possible, like the surroundings. If they are on the side of a red brick building, we would like to see red antennas. We are encouraging that utility poles and the right-of-way be rebuilt or used, or that parking light poles or stadium light poles be used. We are looking for the continued use of existing towers that are used by other wireless service providers. We are encouraging those to be located in wooded areas or on city owned or other public properties.

I will now discuss the specific guidance that will be used in reviewing these applications for both administrative approval and for Conditional Use approval. The objective of these design guidelines is to minimize the aesthetic impact of the facilities. Primarily in that we are looking for reduced visibility. To accomplish that, we would like to be able to preserve the existing character of the area. If it is an industrial area, you obviously have different visibility requirements than you would if it is a residential area. We are looking to minimize the height and mass of a tower so that it is only as high and as big as necessary. To minimize the silhouette, preferring monopoles over a lattice tower and flush mounted antennas over a top hat antenna. We are looking to use colors and textures that blend with the background. We are looking for camouflage structures, such as flag poles and steeples that we don't see being used in the community today, and we are looking at screening by using existing buildings and plantings.

We would also like to see, when existing building are used, that the antennas be mounted flush to the wall or set back to the roof and not exceed a height of 20 feet above the roof. We are looking for equipment cabinets to be screened or hidden or buried or landscaped, something along those lines, and to limit the lighting to only that required by federal regulations or permitted by a variance, in the case of strobe lights.

We feel that the recommendations before you today represent a significant improvement over the current system. Specifically, these recommendations provide for the following: 1) It permits wireless communication facilities in all zoning districts, which is a radical change from what the current system permits. 2) It provides for administrative approval or Conditional Use approval rather than a zoning change or a variance, which is a much easier task to be met by the applicant. 3) It provides for policy guidance for all wireless communication facilities rather than just towers, and it outlines specific policy recommendations to guide the review and approval of all applications.

We feel like we have taken great care and spent a considerable amount of time to develop a system for addressing the community's needs for wireless communication. We have involved the stakeholders and all sides have made compromises to come up with this plan. Quite frankly, I don't believe there is anybody that got everything they wanted out of this plan, but I think it is something that everyone can live with, even the wireless service industry. The plan does encourage the low in height approach, basically keeping things as low as possible and camouflaging them as much as possible, which was recommended by our consultant. It also provides a case-by-case review process with specific design guidelines and policies to guide those decisions.

The action that we recommend to you today is that you hold the public hearing, which you are undertaking currently, and that you take comments from the public and feedback from the industry who we have worked with in the development of this plan, that you approve the Wireless Communication Master Plan as an element of the community's Comprehensive Plan and approve the related amendments to the Zoning Code and the filing fee ordinance and resolution to implement the recommendations, and that you recommend approval of the same to the City Council and the County Commission, who we expect to hear these items on July 11 and 12 of this year.

That concludes my formal presentation. You also have quite a bit of correspondence. I don't know if you have had a chance to read all of that. Most of it was received just this morning, so I think I will go through that with you and address staff's position on that. I am sure you would want to know what that is, and that will alleviate any questions and answers that we might have to go back and forth on.

The first item I will address is a letter from Ferris Consulting regarding visually and environmentally sensitive locations. There is a memo from Marvin Krout that addresses that. We do agree that there does need to be a better definition of

what those visually and environmentally sensitive locations would be. We have proposed a process which basically would direct the Planning Director to develop a map for presentation and approval by the Planning Commission, which identifies these locations, so that all applicants would know what those are and know what to expect if they were to locate a tower in or near those locations.

Another memorandum you received is from Tim Austin. If you will look at Page 3 on that, he provides a setback narrative analysis which basically does a good job of defining what can be done with the one-to-one setback that can be received with an administrative approval on an application by the applicant. What it does not mention is that the setback could be even less than that if the applicant chose to apply for a Conditional Use permit.

On Page 4, Tim Austin is proposing to basically include Limited Commercial zoning rather than General Commercial zoning as the zoning district where towers are permitted up to 150 feet with administrative approval. Staff has discussed this and feels that the Limited Commercial zones are more neighborhood, oriented and it is more appropriate for a tower of that height to receive public scrutiny and be approved with a Conditional Use in those zoning districts.

On Page 5 Mr. Austin is recommending that we remove the requirement that an applicant demonstrate that antennas cannot be placed on an existing tower and rather than basically any tower that is proposed not be considered unless that there is no option to constructing the tower, that the review should just be a yes based on the design of the tower, with no consideration as to whether or not the tower is even necessary. We feel like that will lead to a significant increase in the number of towers in the community and that some of those additional towers will certainly be unnecessary.

On Page 6 of Mr. Austin's memo, it mentions that the application for administrative permits should be to the Zoning Administrator with concurrence by the Planning Director rather than the other way around. We are not really sure exactly what that would accomplish, but the reason that it is proposed the way it is is that we feel like these are land use decisions rather than enforcement decisions.

The final memo that I will go over with you was received from Curtis Holland. It goes through several components of the Master Plan and the ordinance that you have before you. I think I can address nearly every one of these. I will start with Subsection 1b, where it says that antennas should be inserted after structures. The intent of Section 1b is to permit the replacement of or attachment to existing structures, such as light poles. The attachment of antennas, or the replacement of them, with height increases up to 25%, the issue of adding antennas to existing structures or towers or those types of things is handled by Subsection 1c, which is immediately below that in the Master Plan and the code revisions.

Then Subsection 4, where he mentions that strobe lights should be left to the FAA, we feel that currently, and even under the proposal, the strobe lights are permitted by a variance, and we feel that that is sufficient if they are required. Subsection 7 deals with the requirement up front of leasing land. We discussed this during our stakeholder meetings and actually removed a requirement that had been in there previously, proposed by staff, to require leasing sufficient land for not only the tower, but also the other structures that are placed at the base of the tower. We have removed that requirement and in lieu of that have required that the property owner acknowledge that that may be a requirement in the future in order to meet the co-location requirements of the Zoning Code.

Subsection No. 9 deals with the Federal Aviation Administration (FAA). We feel like it is important to have this statement in there, since the community may want to have more stringent requirements than what the FAA does, as far as protection of the local airports. Subsection 10 is a statement that applications shall meet all federal, state and local requirements, and it is implied that those cover the other sections, and we don't feel like they do adequately address the community's interest in those issues.

As far as the submittal requirements are concerned, I think we are probably still going to have some disagreement, especially on Subsection 3. Staff still feels that we are going to need assistance in probably at least one-third of the cases for review by a professional engineer to determine whether or not the application is meeting the requirements of the Master Plan and design guidelines. As far as the 'vicinity' term which is listed under Subsection 2a, I think that that probably could be more narrowly defined. I think that is a good point.

On Page 3 of the memo, on bullet point No. 5, our intent is that the tower would be removed after it has been unused for more than one year, and if the wording is unclear to that effect, then we agree that it should be changed to make sure that everybody understands that we do intend that it would only be removed after being unused for a year. On bullet point No. 6, there is some general language in the Code revisions that are before you regarding all types of Conditional Use applications, and even zoning change applications that involve an access road and whether or not that access road should be included as a portion of the site for determining the radius of the notification area. We do agree that in nearly every instance, if not every instance, for communication towers, that the access road would not need to be included in that area for notification purposes.

The bullet point No. 7 regarding setbacks says that most of the setbacks should be no more than 1 to 1. I think I have adequately addressed that that is certainly capable under the proposal that is before you today with simple zoning adjustment application and administrative approval, and the setback could be even less than that through a Conditional Use permit. Then Article 8 is regarding the fact that there should not be able to be additional conditions placed on administrative approval and we feel like, in certain instances, there certainly will be cases where applications will be submitted that perhaps do not entirely meet the design guidelines, but if there are conditions placed on that that provide for those design guidelines, that will prevent these applications from having to just be outright denied and then appealed through a conditional use permit process.

That concludes my remarks. If there are any questions, I would be happy to answer them."

MARNELL "I don't see any at this time, Scott, thank you. We will now hear from members of the public. Oh, Commissioner Hentzen, I'm sorry."

HENTZEN "In reading the agenda for today, on this No. 2 DR 99-10. Is this a public hearing?"

MARNELL "Yes, it is."

HENTZEN "Then why don't we say that? Is it a public hearing?"

MARNELL "Yes, it is."

HENTZEN "Well, shouldn't we have put that on the agenda? It is the public hearing, or a public hearing."

MARNELL "Marvin, would you like to address that?"

HENTZEN "Maybe we got something that said it was going to be today."

KROUT "We could have said public hearing. Sometimes we identify another items as saying public hearings, but the Planning Commission opens up all of your items to public discussion. We did meet the requirements of the law in advertising this in the newspaper and also provided notice to all the parties that we were aware of that this would be a public hearing. So I don't think there would have been much question about it."

HENTZEN "Okay. If you think it is a public hearing, so be it."

MARNELL "Thank you. Okay, let's start the public hearing. Before we get started, how many people here want to speak on this issue? I see only three, no four at this time. Okay, let's get started."

TIM AUSTIN "I am with Austin Miller. I did fax over, this morning, a kind of a position on our perception of what the Wireless Master Plan does. Just in reviewing it very quickly, first, staff should be commended. They did put a lot of time and effort into it. They did accomplish a lot of things. Unfortunately, it is like running a quarter mile drag race, you don't stop at the quarter mile, sometimes you go past that in line. I think that is what has happened here. We may have taken the plan a little bit too far.

I would like to say that I am not sure that all of the stakeholders were represented in the plan. We certainly had industry representatives from the wireless industry as far as cellular phone usage and for paging companies, but there is another group that was not present at the table and that was the people who are going to provide wireless internet. There are at least four of those entities in the market right now and they were not aware of this.

The other group that was not present at the table was the end users of the technology. Many of you probably saw the article in the Wichita Business Journal on May 6 that talked about how Wichita was going to be studied as a high-tech manufacturing center. Unfortunately, when we want to accomplish the high-tech manufacturing, we often rely on other technology, and certainly we will be relying on the technology that is dependent on the wireless towers, so we have to be aware of what that impact is. We are of the opinion that, again, the plan has gone too far. It has made it too aggressive, which would make it difficult for Wichita to have that future growth in technology.

The other thing the Plan does, as we have characterized it, it is a knee-jerk reaction to the growth in the cellular industry. It doesn't really address, quite frankly, where the future of wireless technology is, and that is in data transfer, again as it relates to manufacturing and how businesses communicate with each other. I don't know if any of you say the article in the Wichita Eagle, in yesterday's business section, but it talked about a company that is going to provide application service via the high speed Internet access, and basically you outsource your file servers, your communications. We do that internally at our company. Our E-mail is not internal to our computer system, it is outsourced through an account service provider. There are a lot of areas in this town that don't have access to Road Runner. They don't have access to digital subscriber lines, and the only way they are going to be provided economical access to the Internet and high speed data transfer is through wireless providers. Again, those people were not at the table. Their technology is different than the cellular technology, or it can be, and quite frankly, some of the cellular technology will be used in that fashion as well, and that change is coming.

The impact is kind of a hidden or unseen impact. If you make the development of that technology and the infrastructure too onerous, the private sector will take their investment dollars, they will invest them in other communities. It is a cost we don't see as a community, but it is very real. In business we look for our bang for our buck, so to speak, and if they don't get it in Wichita, they will get it elsewhere. They have limited investment, limited capital in which to make those kinds of improvements.

The rules, as we proposed, if you saw those, and Scott did an accurate job. We realize that we could have the setbacks reduced through a Conditional Use process, but really what the difference is, and I think it is a fundamental difference, between what is being proposed and the rules that we have proposed is really the ability of somebody to go pull a building permit. Under the rules as they are proposed, virtually every application, every desire for a new tower is going to go

through the Conditional Use process. The industry does not want 65-foot towers. That is just a fact. And I think we have a fundamental disagreement on that.

The 'GC' zoning, if you look at the inventory of properties that are zoned in this community and this county, the ability to have 'GC' zoning is very limited. I don't know what the percentage is, but it is definitely not out there. That is why we proposed 'LC' zoning. Quite frankly, the people that are going to use the Internet access are small companies like myself, they are located in 'LC'; they are located in narrow corridors along East Central, in the downtown area, and you have to have that ability to get them that type of service. I think that is the fundamental difference. I would be happy to answer any questions you might have about that."

PLATT "Tim, is there a city in the general population comparable to Wichita that has a flawless Master Plan that you recommend to us as ideal?"

AUSTIN "When we first started this, and I don't know that there is an answer to that, Dr. Platt, but there are two schools of thought to that. We talked about that at a meeting I was at earlier this week at the Chamber. That very question was raised and there were two schools of thought. One school of thought was the question as you presented it. You know, what is Omaha doing, what is Kansas City doing, what is Tulsa doing?"

The other school of thought, though was if Wichita is to be, as the Business Journal phrased it, the next Silicone Valley, what are those areas that depend on technology, what are their rules? They may or may not be comparable in size to Wichita. I think fundamentally we need to step back and take a look at not so much where we have come from and where we are today, but to look a year from now, five years from now. What is the technology going to be? What is the need of industry and business in this community? Does this plan fit that? I would tell you, as someone who follows trends and technology very closely because we are involved in it, I am not sure that this plan does."

PLATT "In other words, you don't know of a plan that would meet your requirements?"

AUSTIN "I think for as many communities as there are out there you are going to find different plans. I will note and I can distribute it to you at a later date if we choose to set this aside for a time. There is the National Association of Counties on their web site. We downloaded just a brochure that had a recommendation from a consultant that talked about how to plan for towers in your county, and again this is a governmental association. The Wireless Master Plan that we have done has accomplished, to a certain extent, some of the recommendations that this web site had, but it doesn't meet all of the things they recommended.

I might make one other note. I did have a photograph, but one of the things on height I think we tend to forget, and it just occurred to me that I had this in my pocket, is utility poles. I have a picture of some power poles, transmission lines that are down at 55th Street and Rock Road. Those things are 120 feet tall. They are every 400 feet for 2 miles. I guess they can do it by right. Just for comparison's sake."

HENTZEN "Tim, I think you inquired of the National Association of Counties. If you inquire, why wouldn't we also inquire of the National League of Cities that the Mayor is the President of, because you could either frame the question in a population of 500,000 to a million, and you might find some cities that have some pretty good plans."

AUSTIN "I know that Scott did a considerable amount of research on the Internet. Like I said, there are a lot of different rules and ways that communities have approached it. Maybe he can address it as far as is there somebody that has adopted rules that we have apparently approached it here."

OSBORNE-HOWES "Tim I was just curious. You said that the industry was not interested in 65 foot towers, and you also mentioned that a lot of the small businesses located in the neighborhoods could be using this, and I am trying to imagine why a 65 foot tower or less would not meet their needs."

AUSTIN "They could probably answer that better, but understand that at 65 feet it kind of contradicts the desire to co-locate as well. If you have somebody at 65 feet and then somebody else wants to be there, they are at 55 feet. The other thing is that, as we have talked about in the past, is with the taller tower, typically with cellular technology, you get greater coverage area from a physical standpoint in that in shorter height, it is going to take a significant number more towers. When you look at the cost to develop a 65 foot tower versus a 150-foot tower, really the only difference is in the cost of the tower. The equipment is the same for both of those. If it takes ten 65-foot towers to accomplish the 150-foot one, then you have increased the capital investment by 10 fold, essentially."

OSBORNE-HOWES "Can you provide documentation on that?"

AUSTIN "I would be happy to, yes."

WARREN "Tim, it seems quite obvious that you have some problems with this and would like to see some changes, and have subjected us to the fact that there may have been some more input that maybe should have been into this. Do you feel that that additional input in time would maybe bring us to a little more workable document?"

AUSTIN "I think so. When I mentioned the two stakeholders that I felt weren't present in those workshops, I think there is some interest in the business community for them to maybe have some input and to look at that. Any time you can get

additional input, I think you come up with a better document, or at least you satisfy everybody. I am not sure everybody has had the proper opportunity to provide input."

WARREN "Make a guess. How much time do you think maybe would be required to accomplish this?"

AUSTIN "I would say maybe a series of meetings, 30 to 60 days."

MARNELL "Tim, I have a question for you with regard to the wireless data applications. Don't those tend to be point to multi-point applications?"

AUSTIN "Yeah."

MARNELL "Are you seeing a problem with the end users on that?"

AUSTIN "There are some problems in the community with that, yes. And also, some of the technology is different from the Cellular PCS. There is different technology in that field, but for instance, some of it is based on microwave, which is more line of sight. So obviously, at 65 feet, when you are barely clearing the treetops and buildings, you have a problem achieving that line of site.

I think what your question asked is really one of the reasons why we need to take a step back and study it further, because they really haven't had an opportunity to address those kinds of issues."

MARNELL "Do you see, the way the plan is written now, that an end business could put a 20-foot structure on any of their buildings and still be underneath this ordinance?"

AUSTIN "It depends on the height of their building."

MARNELL "I am only speaking in regard to complying with the ordinance, not whether or not it would technically work. There will always be those kind of circumstances."

AUSTIN "And that is one of the problems with the ordinance. I can't interpret the ordinance enough to tell you whether they could or couldn't. It depends on the height of the building, it depends on the building's proximity to rear yards, side yard setbacks, and adjacent zoning. The plan is very subjective and open in interpretation, and really, the only the only one that can answer that question is Marvin on a case-by-case basis."

MARNELL "Marvin, do you have a response?"

KROUT "We would be glad to sit down with Tim and explain to him so things are a little clearer. But I guess I just want to ask you Tim, and I know that you have participated in behalf of the segment of the industry that represents the tower developers who are not all that excited about it, but if you were to compare what we have on the books today to what is being proposed, which would you say was more onerous?"

AUSTIN "I would say they are equally onerous."

KROUT "You don't see any improvement in what is being proposed?"

AUSTIN "No, I don't really see any improvement. I think 99% of any new towers or sites that are going to be desired in this market to meet the needs of the wireless community whether it is cellular phone or wireless Internet is going to go through a Conditional Use process, a public hearing process. To that extent, I think they are equally onerous. We have to go through that same process today. I don't see really any difference. I do see a difference that we have allowed it by right in all zoning districts, and that is a positive change, but the reality is that the restrictions are so aggressive and we have gone so far past the end line, and the reality is that no one can meet that test and everything is going to be a Conditional Use process.

You have four wireless service providers for Internet that are coming into this market, there are three PCS cellular carriers that have licenses in this market that haven't even started their build-out, and they all want the same space. They all want to be at the same height. There are going to be a lot more new towers and the question becomes, can they go in, can we make rules such that we can protect the neighborhoods? I think that is a very noble goal and I don't have a problem with that, but can we make a rule as such that they can go in and pull a building permit, or does everybody and every application have to come through this body and through the governing body for a Conditional Use? I think there is a philosophical difference. I think 99.9 % of them are going to."

MARNELL "Thanks, Tim. Next speaker, please."

CURTIS HOLLAND "Good afternoon. I am a land use and zoning lawyer. I mainly operate from Kansas City, but I have done quite a bit of work down here in Wichita and Butler County. I represent Southwestern Bell Wireless and Sprint PCS in these markets and have done extensive work with Marvin Krout and his staff in regards to this proposal that you are considering today. I did provide a letter to Marvin, I tried to send it last night but I understand he didn't receive it. I hope that maybe you all have received it in your packets. If not, I have extra copies for you.

Scott Knebel did go through that with you and address some of the points I made and some of the concerns I had. I would like to back up and say, like Tim Austin, congratulate the Planning staff here as well as the task force that was put together. From where we started to where we are now is a vast improvement. I will tell you that. In all sincerity, the staff has been very professional in terms of sitting down with us, listening to our concerns and being willing to make some concessions on our part. I will agree that in the end, not everybody is happy, not everybody got everything they wanted to in the plan or these regulations. I think, in a negotiation that is probably the way it ends up most of the time. But all in all, I do think we are at a better position today than we were when we first started. Having said that, there are a couple of things that I still have some concern about. I did point those out in my letter, so I will try not to go back over that all over again.

Some of the language can be a little bit tighter, but that is the way it tends to come out sometimes in these regulations. Oftentimes that leads to interpretations and implementations, really, on the part of the zoning staff on how this all comes together in the end. So I think there might be some room for improvement in terms of tightening up some of the language. Just to address a couple of quick things. I like the idea of this two-tier kind of review, or this two-level approval step process that has been set out. One being an administrative permit. I will tell you, having worked in this industry for six years now and in other communities, I am familiar with what is going on in other communities, we frequently have two levels of review. One being a) you go right to a building permit or b) you go through a Conditional Use permit process or special use process, depending on where you are.

The way we have done it and set it up here as it is proposed, there is really kind of a three-level process if I understand this correctly. I guess I would like to have some clarification. I will ask Marvin to clarify this for me. But as I understand it, co-locations, which are kind of a generic term can mean a lot of different things to different people, but what I mean now specifically is being able to locate your antennas on an existing tower structure that already exists. I think that, according to my understanding, and Marvin, I wish you would clarify this, is permitted again still by building permit, is that true?"

KROUT "No, I think it requires an administrative permit, but it has a reduced fee because we realize that it is a simpler review and it won't ever require engineering kinds of review."

HOLLAND "I was under the impression, and maybe you can look at this again and help me understand it, but in terms of the proposed zoning amendments, it would be point No. 4 on the second page. I thought that took care of co-location on existing facilities. I was trying to find it, really, up in the earlier subsection 2 and I couldn't exactly fit what I am talking about now into any of those criteria, either A, B or C, but I thought No. 4 might take care of it. But again, this is where we are taking an existing tower structure, a communication tower that is already in place and simply adding equipment to the base of it and putting our antennas on the structure itself. Most often, in other jurisdictions, that is a building permit-type application. I am hoping that would be the case here, but I understand that is not."

KROUT "In this type of permit, there is a review. We are still concerned about the equipment at the ground and the landscaping, and all of that."

HOLLAND "Okay. Well, then we do have what is a two levels of approval, one being the administrative approval process and one of them being this Conditional Use permit approval process. I am real familiar with the Conditional Use permit processes here and in other jurisdictions, because most frequently that is what we are having to go through anyway. But this administrative review process or administrative permit is different. I am not quite used to that. So my questions are how that is going to be implemented and how these criteria are, in fact, interpreted in actuality."

MARNELL "Mr. Holland, do you need additional time?"

HOLLAND "I would like to take a couple of minutes. I didn't realize I went this long."

MOTION: That the speaker's time be extended 3 minutes.

CARRAHER moved, **HENTZEN** seconded the motion, and it carried unanimously.

HOLLAND "I will try to go quickly. The point that I was getting to, in terms of the implementation of the administrative permit process, I am a little bit concerned with some of the later regulation proposals at the end where it allows for the Planning Director to impose additional conditions, not knowing what those conditions might be. What my thought process was here is that if we, and sometimes we have to modify our own plans to get an expeditious approval, we might do that and sacrifice some sort of greater coverage to go get an administrative permit, and in doing so, I would hope that if we are willing to make those sacrifices and fit our facilities within these administrative permit approval guidelines, that we ought to just really be approved. If we can do that, and I don't know what these conditions might be, and that is what tends to scare me a little bit. It is a little bit of the unknown.

I am hoping, and I think that Marvin and his team will be reasonable about those, but really my concern is about implementation of this administrative permit type of process. I did want to have clarification from Marvin or someone on the Planning staff about the compatibility standards. Are they or are they not applicable in a Conditional Use permit application?"

KROUT "You can waive them as part of your Conditional Use application."

HOLLAND "So you are starting from the premise that they are, in fact, applicable, and that we are going to try to reduce that through that process?"

KROUT "As part of an administrative permit, you could ask to reduce them up to the 1 to 1 ratio. If you need to go beyond that, then you can ask for that further waiver as part of your Conditional Use."

HOLLAND "I do think that having dealt with other zoning codes in other jurisdictions, the compatibility standard, the setback here in Wichita is a bit larger, more burdensome than we are used to seeing in other communities. I don't know exactly what the rationale for having it is. I don't think it is a safety issue, I think it might be some sort of aesthetics issue, but again, that is kind of an arbitrary distance. I think it is a little greater than what we are used to seeing in other jurisdictions. But all in all, again, from where we started to where we ended up, we are much happier with the plan."

Finally, I would like to talk about the requirement that we provide radio frequency engineering justification for our facilities. I think that is fine, to some extent. We are used to having to explain the need for our facilities. I think we must start with the basic premise that we aren't in here constructing towers because we like to construct towers. They are very expensive and we try to avoid that at all cost. What we would like to do is do things like administrative-type permits and those kinds of things, so I think that if the staff is fair with us on the RF justifications, I would like to avoid having to go outside as much as I can to third parties who don't know anything about our systems and aren't intimate with our network design. With that, I conclude. I am here to answer any questions you might have, and I do appreciate the opportunity to give you these comments."

MARNELL "Thank you, Mr. Holland. Are there any questions from the Commission?"

WARREN "I think what I am hearing and you would probably be coming more from the legal standpoint than maybe some of the other responses we are going to have, but I am hearing from you, what I believe you are saying is maybe a little unpredictability, maybe it is a little ambiguous objective, maybe it is a little ill-defined in some cases."

HOLLAND "I do think that the language could be tightened up a little bit in some of the areas. I am a little concerned about ultimate implementation, particularly with regards to the administrative permit process. I do like the idea, and I like being able to have an approval process that is easier to go through. I would just like to know that if I am going to go through that process and in many occasions I am re-designing my system, maybe to do something easier and something more in line with the goals of the city as reflected in the Master Plan and these amendments, that if I do that, I get approved. I want to have some more certainty about that. Without knowing how in the end it is going to be interpreted and implemented, I don't think that just yet. But I would be more comfortable if you said, for example, that if we fit within 2a through 2e of 2f, you get approved, that would be my preference."

WARREN "You see, then, the possibility of maybe some variable standards that could lend themselves to a little discrimination?"

HOLLAND "I don't know. That is all implementation. I think historically, the staff has been fair when they have reviewed these. I know that the Telecommunications Act of 1996, which really kind of overshadows this entire process here, prohibits discrimination against functionally equivalent services, so I don't think, and hope, at least, that that doesn't come about. I do think, though, that if you are, and I do understand that you have to have some flexibility and discretion here, but that also may open the door for some sorts of discrimination. I don't like the word discrimination, but maybe some treatment that is maybe a little bit different than for another. I don't know. But there is a door open there, though."

HENTZEN "Let me ask, do you understand the administrative application and approval. Supposing you can't get approval administratively. What is the alternative? Do you go directly to the courts, do you come to this body or the City Council or what? Is there an appeal process?"

HOLLAND "Yes, there is, and it is really the Conditional Use permit process. You would have to exhaust your remedies and that remedy is the Conditional Use permit review process. In my legal opinion, we couldn't get into the court house until we did that. If Marvin, for whatever reason, say we fit within one of these criteria here, but ultimately he decides, and it appears to me that there is room for him to deny an application for an administrative permit, even if you fit within these criteria. Then our next step would be, then, to really appeal his decision to the ultimate, which would be you, the Planning Commission, who hears Conditional Use permits. Then once we have exhausted that remedy, we would have the courts available to us. Obviously, that is the very last resort. We would try to avoid that at all costs."

MARNELL "Thank you, Mr. Holland. Next speaker, please."

GREG FERRIS "I represent AT&T Wireless services. I have represented AT&T through the entire process from the day that Mr. Kreines came on board and embarrassed us all, and then to the point we are at today. I would like to say that staff has been very accommodating, has worked very hard to meet the issues that AT&T has brought forward, and I think even demonstrated today when the issue that I raised in a letter to each of you that I hope you received, and they addressed that even further at this late hour. So from that standpoint, AT&T believes that we have made great progress as Mr. Holland has said. Obviously, if AT&T was to have sat down and written this plan in its own corporate headquarters and sent it to you for approval, it would not appear as it does today. Obviously, if I would have gotten everything that I requested from staff, it would not appear as it does today."

AT&T has a relative level of comfort that we can work within the guidelines that are in this plan, but we wouldn't mind if the Commission would see fit to reduce the setbacks, for example, the 1 to 1. We believe that, as Mr. Austin stated, that that is most appropriate. We are willing to try to work within this plan, knowing that if we find that it is not compatible with the types of things that we are trying to do, that I will be one of the first people in this building meeting with different individuals to tell them that the plan is not being implemented as we believed it was to be.

Having said that, I do have a couple of questions because Mr. Holland's testimony raised a couple of issues. I believe that I had talked to staff and we evidently had a difference of opinion on how this was the outcome. Under No. 2 on the ordinance, Mr. Krout, I see where it says 'the following wireless communication facility shall be approved by administrative permit in any zoning district, etc.'. As I read that, my understanding was that if we come in and we meet the criteria that we will get a permit. That while there is some objectivity and subjectivity that will go on if we meet the guidelines, it will be very similar to the process that we went to under the moratorium, where while we were allowed to get a building permit, Mr. Krout still reviewed those, and instead of applying for them in the Central Inspection Department, we applied for them in planning. Once we had that administrative permit, that guarantees us then the building permit, but it is the 'shall' that unless we do not comply with the conditions that are set forth, that we will get a permit. Is there some...?"

KROUT "No, you are right, it is just that there is some subjectivity. Members of the Commission, I don't think we could ever write out all of the subjectivity. But I think there is some subjectivity in those criteria, so there may be an occasion where there is a disagreement about whether or not you are complying with these criteria. But we used the word 'shall' to say, and I think that gives a stronger basis to the applicant to say, that we can't arbitrarily deny this case because we don't like it."

FERRIS "Well, not only arbitrarily, but you have to have some cause that you would have to spell out to us as to what criteria we don't meet."

KROUT "Yes, what you don't meet and why."

FERRIS "I happened to pull some 35 building permits during the moratorium and during that process, we did go through this review as stated, and with one exception, we had absolutely no problem. I think it was one in the historical district that we corrected. So I am not overly concerned with the process. I believe that if that is the process, that we can work within that structure."

Just as a matter of clarification, Scott, on the third page, the third from the last paragraph, is that where we changed it to 25% and you still have it as 20%? On the actual ordinance itself on the third page."

KNEBEL "No."

FERRIS "It is not? Why isn't it?"

KNEBEL "The question that Mr. Ferris is asking is referring to Item 2b where it talks about increasing the height of existing structures by as much as 25% for the placement of wireless antennas on that structure."

MARNELL "Where is this?"

KNEBEL "It is in the ordinance, the two page one."

FERRIS "Not the plan, just the ordinance."

KNEBEL "Yeah. The Proposed Amendments to the Wichita-Sedgwick County Unified Zoning Code for wireless communication facilities, on the first page where it says Item 2b. On the third page, the third paragraph from the bottom where it refers to Article V.i.2 that has to do with increasing the maximum height permitted by the zoning district. That can be waived by up to 20%, and that actually refers to structures other than wireless communication facilities. What we are doing here is modifying it. That article had to be modified in order to pull out and add the compatibility height standard."

FERRIS "So we will still be allowed the 25% to rebuild any existing structure?"

KNEBEL "Right."

FERRIS "Thank you. That was just a question that I had. Finally, Mr. Holland's statements where he asked for some clarity on some issues; we certainly believe that if the plan can be as clear as possible that it will save the Planning Commission, the industry, and staff the greatest amount of time, so in those areas that he has pointed out where clarity can be achieved, we at AT&T would agree that those should be implemented, and that would be in the interest of the community, not just in the interest of AT&T. I would be glad to answer any questions at this time."

WARREN "A couple of speakers before you, one very emphatically, the other questionably, suggested that probably the way this thing is written right now, we are going to wind up with every application being a Conditional Use permit. You have read this as good as anybody, how do you feel about that? Do you think we are going to wind up with Conditional Use permits as a condition of application?"

FERRIS "Let me first say that Mr. Austin and Mr. Holland both know more about this industry than I do. They have been in it much longer than I have, so I am going to give you my opinion.

My opinion is that no, not every case will come to you as a Conditional Use permit. In fact, far less will come to you today as a Conditional Use permit than would have under the current ordinance. AT&T believes that this has given us some flexibility that we didn't have before. AT&T will be building 65 foot towers in residential areas. Now, when Mr. Austin speaks of some of the new industries that are coming, they will not be able to.

I will be representing before you, possibly in the near future, a company that is doing a lot of the microwave technology. They are looking at 150 and 190 foot towers. We will be trying to focus, obviously, in commercial areas, knowing that it is much easier to do. I believe that when you get to that height, the requirement for the number of towers goes down dramatically. So I disagree with the whole premise that staff has on this is that we should be encouraging shorter towers, because taller towers do limit the number of towers. So if you want less towers, you build taller towers. It doesn't matter what you do, you build taller towers. But if the community has decided that the premise is that we want shorter towers, there will be some industries that will still need taller towers. There is no question about that. I completely agree with that because I am going to be representing one of those. But as we have gone through an analysis, we are finding that it is not impossible for us because on an AT&T cell tower, we have about a quarter of a mile variance and that is it. When we are in a search ring, you've got a quarter of a mile and that is it. You can get a little bit outside of that in just extreme circumstances, but you really need that much clarity in your coverage.

In the microwave industry that I am looking at, we are looking at differences of three-quarters of a mile to a mile and a quarter, so you can see right then, as you expand the size of that search ring. I don't know whether that answered your question, Mr. Warren."

WARREN "No. I think what I am hearing from you is that as long as you want to stay in the 65-foot range, you are going to be all right without a Conditional Use permit. If you get above that you are probably going to need one."

FERRIS "No, well I mean it depends on what you want to do. We have identified areas where we can put up 150-foot towers, for example."

WARREN "Without a Conditional Use permit?"

FERRIS "Absolutely."

MARNELL "Are there any other questions from the Commission? Thank you, Mr. Ferris."

FERRIS "Thank you."

MARNELL "Is there anyone else in the audience that wants to be heard on this matter?"

TIM LEBLANC "I am an engineer with the local wireless internet service provider here in town. We are a locally owned company that just kind of entered the business here at the first of the year. That is probably why we are not involved with any of the original discussions.

Typically, the equipment we are using right now is using a low-power frequency. It is an unlicensed band and we are only allowed by FCC to push about half a watt. Currently we can only push so far with the limited power requirements that we are using. The equipment that we are using also is fairly small. The radios are small and we are trying to find decent places to put our equipment right now. But the Master Plan eventually is to provide total roaming capabilities for data, for your laptop, so you basically can go anyplace in town and have Internet connection or using virtual private networks access your office network or anything like that.

We are doing some experimentation right now, basically on the west side of town, putting up 60-foot towers, which we are able to get permitted under the Office of Central Inspection into apartment complexes. We are able to fall into those categories right now and they are allowing us to put those up. We are having some problem with that height with the equipment we are using. We are not able to get very far. At one time, we thought we could probably be every half-mile to provide total roaming. It looks like we are going to have to cut those distances down a little bit. So the higher we get, the farther we can go. That was just basically clarifying what you probably have already heard.

The commercial areas that we are trying to hit, we have kind of stumbled with Central Inspection being able to put any kind of a tower in those locations. The zoning doesn't allow us to put up even a 60 foot tower right now, and we have looked at areas like Reflection Ridge, the northwest fast-growing area. They are not able to get the Roadrunner or DSL. It looks like Southwestern Bell's DSL isn't even going to be available to them for years. We are not able to put a tower up out there at this time. We are looking at, down at Harry and Webb, southeast, and again they are not able to get those same services and again we have gotten into this limitation where we can't put up any towers, so we are not able to provide service to the customers there.

I heard about this meeting at about 11:30 today, and I came up here mainly to introduce ourselves and let you know that we are in town. Tim was talking about the new industry of the wireless internet service. We have done some research and right now, Wichita is probably as far along as any other city in the United States, providing wireless internet service, and so we are kind of on the cutting edge. We have been talking with the Wichita Business Journal. They have done a

couple of articles on us and things. You may have heard of us before, and that is kind of where we are at right now. Any help in making things easier for us is always a plus.

I haven't had a chance, really, to study the moratorium or the plan that you guys have. As I said, I just heard about this earlier today. Do you have any questions?"

MICHAELIS "This may be a question for both you and the wireless people, but can you, or to your knowledge can you co-locate on towers that, for example, may be a wireless? Will your technology work on theirs without interfering with each other?"

LEBLANC "It appears so, yes. We are not co-located anywhere on a tower close. Our main site right now is up on the old Holiday Inn Building where we are co-located with a lot of paging companies and we are not having trouble."

MICHAELIS "If they had a 150-foot tower, you could co-locate on that 150-foot tower and it is going to benefit both of you and reduce the total number of towers equally?"

LEBLANC "Yes, if it is financially feasible for us."

KROUT "Hasn't your firm been in discussion and maybe even had an agreement with KG&E to use their facilities?"

LEBLANC "Yes, but basically to get on top of utility poles and we are still dealing with the City on getting a franchise agreement with the City. KG&E has given us a preliminary okay on doing that, but we have kind of hit a brick wall with the City right now and are waiting on approval from them."

KROUT "You had some franchise issues, and some of the questions I think we are talking about here with regulations. But I guess the point I was trying to make was that as we understood your system, it was largely going to the existing utility poles; then if they are 80 feet or 100 feet or whatever height they are, they could be used without Conditional Uses."

MICHAELIS "My question, I guess, was mainly more would the technology be compatible with each other."

KROUT "To put it on the same pole?"

MICHAELIS "Yeah."

LEBLANC "We are using different frequencies, so we should be able to, as long as we don't interfere with what is already on there."

MARNELL "Are there any additional questions? Are there any additional speakers to be heard on this item?"

CARLOS RICHARDT "I represent Connectivity Services here in town. We offer Internet services. We do all type of services. We are also a cell provider. The size of the antenna will be a severe problem for us because we are also trying to reach some of the smaller towns that are around Wichita. We want to be able to bring them into the Internet. It is very difficult for them to get services because of the phone companies. To be able to reach these smaller communities is basically based on distance and how high you can go.

So for us, doing that type of business and also smaller businesses out and around the county, they don't have access to the Roadrunner and some of the other services from the cable companies. It is very difficult to try to give them the services if you cannot get high.

We just found out about this meeting about 12:30 today. We didn't have any idea that it was happening. Right now, we are trying to set up some communications with some businesses where we are going to need to get at least 100 to 120 feet high to be able to reach the businesses that we are trying to reach. The reason that you need to get that high is because there is a very simple formula that you need to use that depends on the obstacles that are in the way. Most of the problem is given because of the trees. The trees, when you get rain, you get some retention of water and that creates a problem with your frequencies, so you have to be able to clear even the treetops at an altitude for a given distance.

We also would like to be able to have a little bit more time to be able to see these, to get time for our company to take a look at these, because it will affect us quite a bit. We are looking at doing business in Wichita, too, with the wireless, and as we understand the technology right now, we will have to be mostly in the 100-foot range to be able to meet our requirements here in the Metro area. That is basically all I have."

MARNELL "Are there any questions of the speaker? Thank you. Is there anyone else to speak?"

MICHAEL DUDLEY "You will have to excuse my voice, ladies and gentleman. I am with CMS, Communications Management Specialists, and I really only have one thing to add here. We are the wireless world; we are the new utility. If it were possible for us to bury our signals under the ground, we would do so because then we would not have a single problem. I think Tim, who I have just met once, made a very good point. We have utility poles that are well over 100 feet all over the place, we have light poles all over the place. Of course, we would like to mount on those whenever possible. They often don't go where we go. They often are not high enough for our uses. But my general philosophical point is that nobody wants to live nowadays without electricity, except perhaps those people on the desert island that are on television.

Nobody wants to live without water, sewer and telephone, and a lot of us in this room, including those sitting on the other side of the table, I am sure are fairly dependent on wireless service by now. Unfortunately we cannot bury our facilities. We would like nothing better than to do so, so as not to be obtrusive. We have to have height because of the nature of the radio waves, and as we go into the Internet world, we are getting higher in frequency. As we go higher in frequency, we have weaker waves that penetrate less. The trees that the previous speaker was talk about, the gigahertz frequencies he was talking about will literally eat his signal and put him out of business. So if you can't be above the trees, you have no business when you are dependent on gigahertz. That is really all I have to say, unless you have any questions."

MARNELL "Are there any questions of the speaker? Thank you. Is there anyone else to be heard on this item?"

JOE PAJOR "I am with the Public Works Department of the City of Wichita. I served as the chairperson of the staff Task Force that was dropped into this process at what I think everyone would agree was its low point, which was when Mr. Kreines' plan went to a joint workshop of the governing bodies. The City Manager and the County Manager realized that it was not a plan that was based on truly listening to the industry and listening to the concerns of that industry.

The Task Force, therefore, was created specifically to take the plan that had been recommended by the consultant; to sit down again with the affected parties to listen again with them; and by design, the Task Force only had minority representation from the Planning Department. Other departments were used across city and county government so that we truly could, even though it was that late in the process at that point, we truly could have a step taken back and a fresh look and new people listening to the concerns that were being expressed by the industry. I will tell you that the plan that you have in front of you today, that the ordinance revisions that you have in front of you today represent that process. I will also tell you that in my opinion, there is a diminishing return effect of stepping back again and listening to the affected parties, and that I have a concern that while industry is well represented today, the neighborhoods that we were trying to balance the concerns of in our process are not represented here today. But let me assure you the results you have heard today are the results of a compromise process which several of the speakers alluded to, that got us this far. If we take today's work product and take it as a benchmark and go back into another step-back process and another round of hearings, I don't know that the needs of our community are going to be better served by that, because again, it is like resetting the zero point, resetting the reference point and starting over from the compromised positions that we already took to get to the work product that you have today.

The second point I want to make is that I hope that you will understand that it is the nature of these industries, and I am using plural very specifically, it is the nature of these industries and their technology that I do not think that you are going to be able to put this to bed today or 60 days from now and just worry about it the next time the Comprehensive Plan comes up. It is obvious to me from listening to the speakers this afternoon that Mr. Ferris is a relative old-timer in the industry, and as he pointed out, he hasn't been in the industry very long. I think that is indicative of the fact that this industry is evolving, it is changing; technology is changing. It is an industry in which long-term planning is two quarters out. Whatever you do, whether you choose to accept the work product in front of you today, if you sent it away for another 30 or 60 days, it is going to require, at some point, that we put a plan in place, that we let the staff work with the applicants through the process that is established, either now or later, to see whether or not it needs to be fine-tuned.

I think it is a good point that we don't have a model that we can go to and 'yeah, they got it right in XYZ Oklahoma and we need to model that'. We don't have that, or we haven't found it at least. I would be happy to answer any questions."

MARNELL "Are there any questions of Mr. Pajor?"

PAJOR "Thank you."

MARNELL "Are there any other speakers?"

GLEN WILTSE "I am the Director of Sedgwick County Code Enforcement. The first thing I want to do is to thank everybody who has worked on this Task Force for all of the time they have put into it. The biggest thing, as an enforcement officer, that we have problems in enforcing are rules that are not laid out in black and white basically. Building Codes are black and white. Inspectors all the way down to the clerks can take that Code, technically, and come up with pretty much the same item, hopefully, each time.

Industry, I realize, needs flexibility. Maybe this is the best way of doing it, by doing the administrative approvals. There has been a lot of work put into this and a lot of different industry members have looked at it. I have looked at it a much less length of time than they have, but on an enforcement side, there may be some arbitrary issues in there that may be difficult to determine on an administrative permit. Maybe that is the direction we need to go with a Conditional Use, but I just wanted to let it be known that on the enforcement side, there may be some issues that may be difficult to actually determine whether it should be granted administratively or through the Conditional Use. "

MARNELL "Are there any questions?"

WARREN "Let me ask, as this is drafted now, would most applications come into your department first for an actual permit, or would they come to the Planning Department first?"

WILTSE "I believe they will go through Marvin to start with for administrative permits. Is that not correct, Marvin?"

KROUT "We process, between CUPs and zoning adjustments and landscape adjustments, we probably do about 100 of those a year. That is the way the process is established in all of those cases: the application comes to the Planning Department, and when the Zoning Code was set up it said 'Planning Department approval with the concurrence of Central Inspection or the County Building Inspection'. So we usually end up with the brunt of the work and draft a letter of approval. Sometimes, as Glen knows, those letters contain some conditions to try to clarify exactly what it is they approved. I think it is important that you have that process with the ability to attach conditions."

WARREN "So it comes here, you would review it, set conditions if necessary, and then send it on over to Glen's office for a permit?"

KROUT "For concurrence. If he concurs, then it is permitted."

PLATT "I have a question, and maybe Mr. Pajor would like to respond to it and that is: where did the heights of 65 feet and 85 feet come from? Did you consider adjusting those, or do you think they are adequate?"

PAJOR "The height levels were, as Scott referred to, the heart of the matter, and they were extensively discussed with all of the parties. In my opinion, it was a compromise in which we tried to strike a balance, not only between the aesthetic and neighborhood impact versus the needs of industry, but also to strike a process in which the process would be workable and most of these would not end up in front of the Planning Commission and the governing bodies; that staff would be able to address them. Also, the intent was to make sure that as we went through that process that we did try to make the pathway for short towers that were disguised easily and the pathway for taller towers that were undisguised more difficult so as to encourage industry that direction when it made sense with their deployment."

WARREN "There have been three proposals here that would amend what we are looking at as a final draft. Were those submitted to you prior, or did you have knowledge of these requests prior to the final draft? Have you considered these things that we are looking at today?"

PAJOR "I would tell you that we sat with all of those parties in the meetings and went through the compromise process. The document that you have as proposed represents that consensus building and now it is kind of like on appeal in the course of this public hearing. The industry is coming to you saying 'no, we need more still', even after we felt we had them to a point in which they said, as Mr. Ferris said, it is not what they would write, but it is what they could live with."

DALE MILLER "Marvin and Joe can help on this too, but as I recall, to answer Mr. Platt's question, one of the agents, it may have been Mr. Ferris, specifically said in the meeting that utility poles average 'X' height. I think that was 60 feet. Everybody kind of said 'this is how tall light poles and electric poles are', and that is kind of where we arrived at the 60 foot. The question was how tall are those and why can't we get to that height by right?"

PAJOR "That is a good point, Dale. It is an excellent example as to we were going through that process in our meetings and now we are talking about the transmission lines being the benchmark to go up higher."

OSBORNE-HOWES "You said you reached a consensus? There was no minority opposition or anything within your committee?"

PAJOR "I will tell you that my understanding when we got done with the process was that we had reached a consensus. And I will certainly admit to you that based on the information that we have received earlier today, you and us, it doesn't appear that way."

OSBORNE-HOWES "But for the people who were in the committee..."

PAJOR "Yes, but these are the same people."

OSBORNE-HOWES "Yes, I remember that."

PAJOR "The signatures at the bottom of the letters are on the attendance sheets when we met with industry."

MARNELL "Mr. Pajor, that is with the exception of a couple of new companies that were here today, right?"

PAJOR "Yes. And I am referring specifically to the written documents that you have received, not to the last two or three speakers that were talking about the new technology."

MICHAELIS "I would just like to make a comment on that. Mr. Ferris, I am going to pick on you for a minute. I guess I have a hard time understanding why they would have a consensus to 65 feet because as long as I have been sitting on here, I don't remember Mr. Ferris ever coming in requesting permission to put up a 65-foot tower. They have all been fairly extensive overlap. I think that is something we need to clarify."

FERRIS "Are you asking me to answer that question, Mr. Michaelis?"

MICHAELIS "Yes."

FERRIS "Thank you. You are right, Mr. Michaelis, we came in for five towers, one was 90 feet, two were 120 and two were 150 feet. A considerable amount of our infrastructure throughout the city that we did not come here for that was done through the 'administrative building permit-type process' during the moratorium were between 50 and 120 feet. So we did have some of those. While Mr. Miller is right that we said that a 65-foot tower would be equal to a light pole, we had requested at that time that a 65-foot tower be approved by right in residential areas, and that a higher tower be approved by right in Office or Light Commercial, and that a higher tower then be approved in General Commercial. So Mr. Pajor is right, there was an enormous amount of compromise and 65 feet did become the low standard.

Frankly, if you wanted to really simplify this process, I think that most of the wireless industry, and I can't speak for the new technologies that are now emerging, but most of the carriers like 80 to 100 feet; so if you wanted to put 80 feet instead of 65, it certainly would accomplish a lot of the issues that are before us. But that is where we started, but we wanted it in residential at 65; we wanted 80 in office; 100 in light commercial and 150 in general commercial. They didn't like all of those different levels. We thought it might be easy. There was a lot of different discussion that went on."

MICHAELIS "The reason I am asking that question is because this is a very important issue to this community as well as to the future and the future of other industries wanting to locate here. I think it is terribly important that we make sure that we establish a height that does work for everybody and that would ultimately end up with less people coming in here for Conditional Use permits, less towers around the city, and even though they may be taller, it is very hard for the naked eye, driving down the street, to distinguish whether this tower is 100 foot tall or 120 feet tall, or even 65 feet tall. I just think that is something that we really, really need to look at. If it requires a little more time, with all due respect to Mr. Pajor, I don't disagree with it and you have to take steps backwards, but I think this is one we have got to be right on."

FERRIS "We have no problem with that, either. We at AT&T know that under this ordinance we are going to be able to do some administratively, but we are going to be doing some with Conditional Use permits. We recognize that fact."

MICHAELIS "Thank you."

WARREN "I agree totally with comments from Mr. Michaelis. No. 1, in the people I talked to, given a choice of two or three 65-foot towers or one 130 foot tower, they will take the one 130-foot tower every time, so I am not sure where this is coming from that we are getting a hue and cry from the public against a 150-foot tower, unless they are thinking of the old lattice-built tower that we rarely see anymore. We are now seeing the monopole-type tower. I think there is maybe a misconception out there as to what the public is thinking. I agree that a little more time, 30 to 60 days, particularly in consideration of some of these later on requests, would be in order."

MARNELL "Thank you. In the interest of time, we do have other public hearings, I think what we will do for the moment on this item is suspend the public hearing and go through the rest of our agenda. Time permitting, we will open this back up and bring it to the Commission, and if there is no one else from the public to be heard, and try to complete it today. If not, we will reschedule it for a future date."

LOPEZ "Instead of suspending this, why don't we just either approve it or defer it. Take some action. All of these people will have to come back?"

OSBORNE-HOWES "Oh, are they going to have to come back?"

MARNELL "If they want to hear it. That is the prerogative of being chairman. Let's roll right on, and if we can finish it later, we will do so."

LOPEZ "May I have permission to make a motion to overrule the Chair?"

CARRAHER "A point of clarification. Commissioner Lopez is right, the Chair does have the prerogative to make that decision, but it is up to the individual Commissioners if they feel that there is enough support to override the ruling of the Chair, they can do so, but it must be by a 2/3 majority of the entire Commission. That would be my point of clarification."

MOTION: That a decision be made on the item.

LOPEZ moved, **CARRAHER** seconded the motion.

MICHAELIS "Just as a point of clarification. He said 2/3 of the entire Commission. Does that mean 2/3 of the 14 or 2/3 of the members here?"

KROUT "Two-thirds of the members here."

WARREN "Mr. Chair, was your intent again in going ahead with the agenda and to bring this back at the end of this meeting?"

MARNELL "Yes. Time permitting. If we can, in fact. This could get long. There is a lot to do on it and we may be able to get through the rest of the agenda that there are people here for public hearings on that have been announced. We may be able to dispense with those fairly rapidly. They don't look complex, and then we could go right back to this item and hope to complete it today."

WARREN "So your concern, basically, is the amount of time that we should go ahead and exercise on this and it should be a little more than what we have right now?"

MARNELL "Yes. More than what we may have."

OSBORNE-HOWES "You know, if there is a lot of time left on this, I am just thinking that maybe we ought to defer it. I am just concerned that we have a lot of people who have spoken here today and now they are not sure whether they need to hang around the rest of the afternoon. I am like you, we have a long agenda and I am not so sure that we want to discuss this for an hour at this particular point. I am just wondering whether a deferral would be more appropriate to the next meeting.

I also have a question as to whether we were closing the public hearing or not."

KROUT "That wasn't what the Chair said."

OSBORNE-HOWES "It happened so fast I didn't get it."

MARNELL "Is there any further discussion on the motion?"

VOTE ON THE MOTION: The motion failed with 3 votes in favor (Lopez, Carraher and Osborne-Howes), and 7 in opposition Warren, Michaelis, Platt, Marnell, Hentzen, Warner and Johnson.

Item taken out of order:

1. **Approval of meeting minutes for April 13, 2000; April 27, 2000 and May 11, 2000.**

KROUT "Are there any comments on the minutes for these three meetings?"

MARNELL "Hearing no comments, I would entertain a motion to approve the minutes."

MOTION: That the Metropolitan Area Planning Commission approve the minutes for the meetings of April 13, April 27, and May 11, 2000 as submitted.

CARRAHER moved, **MICHAELIS** seconded the motion, and it carried unanimously (10-0).

3. Consideration of Subdivision Committee recommendations.

KROUT "Commissioners, on Items 3/1 through 3/9, you don't have to take any of those items off for individual consideration unless you have questions on them. We should also see if there are speakers on those items. We do have an off-the-agenda item which we are calling Item 3/10, but I think you could take a motion to take 3/1 through 3/9 in one motion."

MARNELL "Is there anyone in the audience who wishes to be heard on any of the items 3/1 through 3/9?"

STRAHL "I need to make one clarification on Item 3/9."

MARNELL "All right, we will pull it."

MOTION: That Subdivision Committee items 3/1, 3/2, 3/3, 3/4, 3/5, 3/6, 3/7 and 3/8 be approved subject to the Subdivision Committee recommendations.

JOHNSON moved, **OSBORNE-HOWES** seconded the motion, and it carried unanimously (10-0).

3/1. **SUB2000-25** - Final Plat of METRO EAST BAPTIST CHURCH ADDITION, located on the southwest corner of 143rd Street East and Kansas Turnpike.

A. As this site is adjacent to Wichita's city limits, the Applicant shall submit a request for annexation. Upon annexation, the property will be zoned SF-6, Single-Family Residential.

B. City Engineering needs to comment on the need for guarantees or easements. The Applicant shall provide a guarantee for the extension of City water along the plat's frontage of 143rd St. East.

- C. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted. This guarantee shall be with the County for service through the Four Mile Creek sanitary sewer system. On the final plat tracing, appropriate wording shall be added to the Mayor's signature block indicating the City's agreement to allow a County sewer district to be formed within the City.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- E. City/County Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. The Applicant shall provide a letter from the Kansas Turnpike Authority indicating their willingness to accept drainage.
- F. County Engineering needs to comment on the access controls. The plat proposes one access opening along 143rd St. East with 90 feet of complete access control from the south line of the plat. County Engineering has approved the access controls.
- G. County/Traffic Engineering needs to comment on the need for any improvements to perimeter streets. No improvements are required.
- H. The name of the owner shall be corrected on the owner's signature block.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.
- S. County Engineering requests the dedication of 20-ft of additional right-of-way from the concrete drainage structures to the Turnpike and complete access control along this segment.

The requested right-of-way has been dedicated.
- T. City Fire Department has required an emergency access easement unless and until a street is platted adjoining this plat to the south.

- 3/2. **SUB2000-30** - Final Plat of Auburn Hills 11th Addition, located east of 151st Street West, north of Kellogg Drive.
- A. The Applicant shall guarantee the extension of City water and sanitary sewer to serve the lots being platted.

City Engineering needs to comment on the need for any additional guarantees or easements. A utility easement shall be provided for the sanitary sewer extension across Lot 2, Block 1. An off-site utility easement shall also be provided.

- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. An off-site drainage easement shall be submitted. A drainage guarantee is required. A Floodway Reserve shall be platted in Lot 2, Block 1, for stormwater detention in addition to accommodate drainage from the properties to the south.
- D. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- E. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- F. Traffic Engineering needs to comment on the extension of a proposed cul-de-sac, Sandwedge Circle, from another cul-de-sac. Due to identical 29-ft roadway widths, the street layout is acceptable.
- G. The township needs to be added to the surveyor's certification.
- H. Traffic Engineering needs to comment on the need for additional right-of-way for Kellogg Drive. No additional right-of-way is required.
- I. City Fire Department should comment on the acceptability of the width of Sandwedge Circle located north of Reserve A. The right-of-way width north of Reserve A shall be increased to 20 feet.

The right-of-way width has been increased to 20 feet.
- J. City Fire Department should comment on the plat's street names. Sandwedge Circle shall be the name of the new street.
- K. Lot 2, Block 2 does not conform with the 50 foot lot width requirement at the front property line. A building setback should be platted at a minimum of 50 feet measured from the side lot lines. City Fire Department has required a fire hydrant placed at the front of this lot. The building setback has been platted as requested.
- L. The Applicant shall guarantee the paving of the proposed interior streets in addition to Kellogg Drive.
- M. The 10-ft easement dimension on Lot 3, Block 1, needs corrected.
- N. City Fire Department should comment on the length of Sandwedge Circle (700 ft) which exceeds the 600 ft maximum for a cul-de-sac. City Fire has approved this street length with the addition of a second point of access. In the event the second point of access does not occur through Fawnwood, the northern segment of Fawnwood abutting this plat should be vacated.
- O. Since this plat proposes the platting of narrow street right-of-way with adjacent 15-foot street, drainage and utility easements, a restrictive covenant shall be submitted which calls out restrictions for lot owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- P. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- Q. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- R. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- S. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.

- T. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- U. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- V. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- W. Perimeter closure computations shall be submitted with the final plat tracing.
- X. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Y. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Z. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

3/3. SUB 2000-13 - Final Plat of ALFIERI ACRES ADDITION, located on the east side of 143rd Street East, south of 79th Street South.

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. Health Department approval has been obtained.
- B. The site is currently served by a Rural Water District. The applicant shall contact this water district to determine the ability of this property being platted to connect to their water line and submit a letter from the water district to that effect.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. County Engineering needs to comment on the status of the applicant's drainage plan. A dedicated Floodway Reserve is required along the south line of Lot 8. The drainage easements should be labeled as "Floodway Reserves". The Applicant shall coordinate the modification or removal of terraces with NRCA. A revised drainage plan is needed.
- E. The final plat shall contain the standard floodway language in the plat's text.
- F. The centerline of 143rd St. East shall be denoted.
- G. County Fire Department needs to comment on the plat's street names. The street names are acceptable.
- H. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- I. The Applicant shall guarantee the installation of the proposed interior streets to the suburban street standard.
- J. The south line of the contingent right-of-way dedication should be denoted with a dashed line. The east and west line of the contingent right-of-way dedication should be denoted with solid lines.
- K. The contingent right-of-way dedication shall be referenced in the plat's text.
- L. Lot 6 does not contain the required 200-ft lot width at the front property line. An increase in the distance of the building setback from the road is needed to meet the standard.
- M. The dimensions should only include two decimal places.
- N. A radius is required on the northeast corner of Lot 11 and the southeast corner of Lot 10.
- O. The outparcel should be included as part of the plat. The Subdivision Committee has approved a modification

regarding lot size for this lot (4.34 acres). The Applicant shall submit a request for an Administrative Adjustment to the Zoning regulations for lot size. The Administrative Adjustment shall be approved before the plat is released for recording.

- P. The distances and degrees on the drawing need to coincide with those in the legal description.
- Q. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- R. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- S.. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- T. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- U. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- V. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- W. Perimeter closure computations shall be submitted with the final plat tracing.
- X. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Y. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Z. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.
- AA. The Subdivision Committee requests that utility easements be included within the area currently designated as drainage easements.

3/4. S/D 99-87 - Final Plat of SAWMILL CREEK ADDITION, located on the northeast corner of Rock Road and 45th street North.

- A. Since this property is adjacent to the City of Wichita, the Applicant shall request annexation into the City. Upon annexation, the property will be zoned SF-6, Single Family Residential and thereby permit the lot sizes being proposed. The final plat shall not be scheduled for City Council review until annexation has occurred.
- B. City Engineering needs to comment on the need for guarantees or easements. The applicant shall provide a guarantee for the extension of municipal water and sewer. A sewer layout is requested. An off-site sewer easement is needed. Utility easements shall be added to Lot 1, Block 8.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. City/County Engineering needs to comment on the status of the applicant's drainage plan. County Engineering requests a drainage plan for review. The minimum pad elevations need elevations. City Engineering has approved the drainage plan. A drainage guarantee is required.
- E. The plat has dedicated complete access control along perimeter streets with the exception of two openings for the commercial lot located at the southwestern corner of the plat, and one opening for the lot in the southeastern corner of the plat. In accordance with the Subdivision regulations, access points are limited to right turns only within 250 feet of the intersection and should be denoted on the face of the plat; or a guarantee provided for the future construction of a raised medial.

- F. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- G. City Fire Department needs to comment on the plat's street names. The final plat tracing shall contain revised street names as required by City Fire Department.
- H. The right-of-way widths for perimeter streets shall be denoted.
- I. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- J. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- K. To improve access to Reserve C from the lots in the southern portion of the plat, it is requested that the Applicant plat access strips between lots.

The final plat has included the requested access strips.
- L. Additional street stubs should be platted to the north or to the north and east for increased mobility when development occurs in these locations.

The Applicant has included two street stubs to the east and one stub to the north.
- M. Traffic Engineering should comment on the need for improvements to perimeter streets. A guarantee shall be provided for decel lanes.
- N. The applicant shall guarantee the paving of the proposed interior streets. The paving guarantee shall provide for sidewalks on at least one side of all through, non-cul-de-sac streets.
- O. The benchmark elevations should be checked.
- P. Reserve B needs to be located.
- Q. Road rights-of-way near Reserve B, Reserve F, Reserve H, and Reserve I need to be dimensioned.
- R. Curve data at the west end of Saw Mill Road on the north side needs to be labeled.
- S. The utility and drainage easement labeled on Lot 9, Block 1, needs to be changed to 40 feet.
- T. The following items need to be labeled: easements on Lot 13, Block 7; Lot 27, Block 2; Lots 29-34, Block 7; road right-of-way on the northwest corner of the plat; curve data near Reserve H on the east and west sides of the road; property line information on Reserve G; point of intersection (P.I.) on Lot 14, Block 4 bearing southwesterly; P.I. on the northwest line of Lot 1, Block 8 bearing southwesterly; and widths of Access Control along Lot 1, Block 8 and Lot 52, Block 6.
- U. The following items need to be located: easement in Reserve C near Lot 16, Block 7; easement on Lot 38, Block 5; easement in Reserve C near Lot 38, Block 7; easement in Reserve E near Lots 38 and 39, Block 2;
- V. Reserve H needs to be dimensioned.
- W. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- X. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- Y. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Z. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who

acknowledges the signatures on this plat, to be printed beneath the notary's signature.

- AA. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- BB. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- CC. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- DD. Perimeter closure computations shall be submitted with the final plat tracing.
- EE. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- FF. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Southwestern Bell and KGE have requested additional easements.
- GG. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

3/5. SUB2000-36 - One-step final plat of LATIMER ADDITION, located west of Tyler Road, south of 87th Street South.

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. Standard soil testing is required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. Access to the property is currently obtained by existing private street which also serves three other lots. The Subdivision regulations limit private streets to serving no more than three lots. However, in approving the Rooney's First Addition – located to the south of this plat - the Subdivision Committee approved this street for five total lots. A private street agreement needs to be established by separate instrument which includes these two additional lots in addition to addressing maintenance responsibilities.
- E. The Applicant shall guarantee the installation of a 24-ft wide road to County standards extending from Rooney's First Addition to this plat.
- F. A turnaround will need to be established for the private street.
- G. The 50-ft private street adjoining the plat shall be denoted.
- H. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who

acknowledges the signatures on this plat, to be printed beneath the notary's signature.

- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

3/6. SUB2000-39 - One-step final plat of SCHRAFT 5TH ADDITION, located on the east side of Meridian, south of 34th Street South.

- A. Prior to this plat being heard by the MAPC, a zone change shall have been submitted and approved. This plat will be subject to approval of the associated zone change and any related conditions of such a zone change.
- B. Municipal services appear to be available to serve the site. City Engineering needs to comment on the need for any guarantees or easements.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. The plat will need to establish lowest floor elevation.
- E. Traffic Engineering needs to comment on the need for access controls. The plat denotes two existing access openings along Meridian. Distances should be shown for all segments of access control. The final plat tracing shall reference the access controls in the plat's text. The Subdivision Committee approved access control except for two openings. The south opening shall be limited to right turns only.
- F. A guarantee is required for the closure of the street return along St. Clair.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.

- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

3/6. SUB2000-35 - One-Step final plat of ALLEN ESTATES ADDITION, located on the southwest corner of 117th Street North and Hydraulic.

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. Standard soil testing is required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage plan. A Floodway reserve needs to be platted within the north half of Lot 2 to follow the existing drainage pattern. A revised drainage plan is required.
- D. County Engineering needs to comment on the access controls. The plat proposes 200 feet of complete access control from the intersection. MAPD recommends three joint openings. Three joint access easements shall be platted and established by separate instrument.
- E. The plat shall indicate the dedication of additional right-of-way. 75 feet of half street right-of-way is required within 250 feet from the intersection of the street centerlines, tapering to 50 feet of half street right-of-way at a distance of 350 feet.
- F. The plat's text shall specify that the contingent dedication of right-of-way will become effective upon the platting of an adjacent subdivision having a connecting street.
- G. The plat legend should reference "CM".
- H. The right-of-way width denoted east of Lot 1 needs to be revised to "50".
- I. The southeast section corner needs labeled as "SE".
- J. In accordance with the Zoning regulations, the building setback from County section line roads needs to be increased to 35 feet.
- K. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for County Commissioners consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.

- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. KGE has requested additional easements.
- U. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.
- V. County Fire Department has required 20-ft wide driveways.

3/8. DED2000-12 - DED 2000-12 -- Dedication of a Utility Easement from Dr. Ron Fiegel, O.D., and Dr. Michael Reno, D.D.S. for property generally located north of 21st Street north and east of Ridge Road.

Dr. Ron Fiegel, O.D., and Dr. Michael Reno, D.D.S., 2020 W. 13th Street, Wichita, KS 67203 .

LEGAL DESCRIPTION: Part of Lot 5, Lake Ridge Commercial Second Addition.

This Dedication is a requirement of Lot Split No. L/S 1034, and is being dedicated for construction and maintenance of public utilities.

Planning Staff recommends that the Dedication be accepted.

3/9. DR 00-06 - Request for a Street Name Change from St. Francis to Greenway Circle.

APPLICANT: Wichita/Sedgwick County Addressing Committee, 455 North Main Street, Wichita, KS 67202

LOCATION: St. Francis extending north of Wassall.

LEGAL DESCRIPTION: St. Francis Avenue as platted in the Bell's Replat of Part of Reserve A in Purcells Fourth Addition.

REASON FOR REQUEST: Renaming of St. Francis due to separation from the northern segment of street.

CURRENT ZONING: TF-3, Two-Family Residential

NEIL STRAHL, Planning Staff "This is a Street name from St. Francis, located about half a mile north of 31st Street South. At last weeks' Subdivision meeting, the Subdivision Committee approved the street name change of St. Francis to Greenway Court as referenced in the staff report and subsequent to the Subdivision meeting. I was informed by the City Fire Department that this street needs to be designated as a circle. Circle is used when a cul-de-sac is a continuation of a street and Greenway Street exists south of Wassall (indicating) right here. Therefore this street needs to be designated as Greenway Circle."

MOTION: That the street name change from St. Francis be made to Greenway Circle rather than Court.

WARREN moved, **WARNER** seconded the motion, and it carried unanimously (10-0).

Off-the-Agenda Item

MARNELL "We will need a memo to bring this item onto the agenda."

MOTION: That the item be added to the agenda for June 15, 2000 meeting.

OSBORNE-HOWES moved, **JOHNSON** seconded the motion, and it carried unanimously (10-0).

3/10. S/D 97-85 - Revised final plat of BRADLEY FAIR 4TH ADDITION, located on the southeast corner of Rock Road and Bradley Fair Parkway.

- A. Existing municipal services appear to be available to this site. City Engineering needs to comment if any other guarantees are required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. A Community Unit Plan (CUP) certificate shall be submitted to Planning Staff for recording with the Register of Deeds prior to City Council consideration, identifying the approved CUP (referenced as DP-191 Amendment #10) and its special conditions for development on this property.
- D. City Engineering needs to indicate the status of the applicant's drainage plan. The drainage plan has been approved. An off-site drainage easement is required.
- E. The platting binder indicates that the site's ownership is in another party from that denoted on the owner's signature block. This name must appear on the final plat tracing, or else a revised platting binder submitted indicated new ownership.
- F. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- H. Traffic Engineering needs to indicate the need for any traffic improvements. In accordance with City Council's approval of the associated zone change on February 12, 1999, Applicant shall meet with MAPD to determine needed improvements to 21st and Rock Road, and the cost allocation with which the applicant is responsible.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. Perimeter closure computations shall be submitted with the final plat tracing.
- N. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- O. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.

P. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat. This will be used by the City and County GIS Department.

Q. Water Department has required the dedication of a 2-ft additional easement along the east property line.

STRAHL "This is located at the southeast corner of Rock Road and Bradley Fair Parkway. It is approximately 10 acres and consists of one lot. A zone change and an associated CUP amendment were approved by the City Council in February of 1999. The plat was approved by the Subdivision Committee in March of 1999, and it was deferred from Planning Commission review as the traffic issues had yet to be resolved.

At question were improvements to 21st and Rock and the allocation of costs imposed upon the applicant. The applicant is meeting with the City Council next week on Tuesday along with the City Manager to discuss his responsibility for the cost of the needed improvements. It is expected that the applicant will be submitting a petition also next week for the needed traffic improvements."

MARNELL "Are there any questions of staff? Is there anyone here to be heard on this item? If not, we will bring it back to the Commission."

JOHNSON "Do we need to defer this again?"

KROUT "No, this would be a motion to approve the plat. What Neil is telling you is that the exact amount in dollars of street improvements to be set by Special Assessments, which is the jurisdiction of the City Council anyway is going to be discussed in the next week. But in terms of all of the other planning requirements, they have been met. We received the final plat and they are asking us to move this on so that the City Council can take action."

MOTION: That the request be approved.

JOHNSON moved, **LOPEZ** seconded the motion, and the motion carried unanimously (10-0).

KROUT "Commissioners, all of the vacation items, 4/1 through 4/8 are advertised public hearings, but we are not aware of any controversy on any of those items. Lisa Van de Water is here if you have any questions and the Chair should find out whether or not there is anyone here to wants to speak on these advertised hearing items. If there is not, you could entertain a motion to approve all of them in one motion."

MARNELL "Is there anyone here to be heard on the vacation items? That is Items 4/1 through 4/8? Okay, we will return it to the bench. Is there anyone who wants to hear from Lisa?"

MOTION: That the requests be approved.

MICHAELIS moved, **PLATT** seconded the motion, and it carried unanimously (10-0).

4/1. **VAC2000-00014** - F & R Enterprises, LLC, c/o Ron Fiegel and Michael Reno request to vacate a portion of a utility easement, located north of 21st Street North and east of Ridge Road.

LEGAL DESCRIPTION:

That part of a utility easement, (Film 1912, Page 2598) described as follows: commencing at the SW corner of Lot 1, Lake Ridge Commercial 2nd Addition, Wichita, Sedgwick County, Kansas; thence North along the west line of said Lot 1, 8.32 feet to the intersection with the north line of said easement; thence N90deg00'00"E along the north line of said easement, 26.86 feet to a deflection corner in said north line; thence N85deg39'36"E along the north line of said easement, 25.67 feet to a deflection corner in said north line; thence N89deg39'36"E along the north line of said easement, 575.52 feet for a point of beginning; thence continuing N89deg39'36"E along the north line of said easement, 50.19 feet to the most northeasterly corner of said easement; thence South along the east line of said easement, 20.00 feet to a deflection corner in said east line; thence S89deg39'36"W along the east line of said easement, 8.34 feet to a deflection corner in said east line; thence South along the east line of said easement, 78.33 feet; thence N90degV, 20 feet to a point on the west line of said easement; thence North, 78.21 feet to a deflection corner in said easement; thence west along the south line of said easement, 21.84 feet; thence North, 20 feet to the point of beginning.

LOCATION:

Generally located north of 21st Street North and east of Ridge Road

REASON FOR REQUEST: Construction of a new building

CURRENT ZONING: LI – Limited Industrial

The applicant is requesting to vacate a portion of a utility easement to facilitate the construction of a new building at this location. A substitute easement will be dedicated by separate instrument.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time May 24, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of a utility easement, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of utility easement described in the petition should be approved, subject to the following conditions:
1. The applicant shall dedicate, by separate instrument, a substitute easement.
 2. The applicant shall submit a guarantee for the relocation of the water line that exists in the current easement
 3. The applicant shall dedicate, by separate instrument, a temporary easement good until such time that the relocation of the existing water line is complete.

The Subdivision Committee recommends approval, subject to the following conditions:

1. The applicant shall dedicate, by separate instrument, a substitute easement.
2. The applicant shall submit a guarantee for the relocation of the water line that exists in the current easement
3. The applicant shall dedicate, by separate instrument, a temporary easement good until such time that the relocation of the existing water line is complete.

4/2. VAC2000-00015 - Marvin and Charlene Brotman and Terra Tech Land Surveying, Inc., c/o Michele Goodrich request to vacate a portion of access control.

LEGAL DESCRIPTION: The north 255.25 feet of access control on 263rd Street West, Lot 8, Brotman Estates, Sedgwick County.

LOCATION: Generally located north of 63rd Street South and west of 263rd Street West

REASON FOR REQUEST: Provide access to residential lot.

CURRENT ZONING: RR – Rural Residential

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time May 24, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of access control, and the public will suffer no loss or inconvenience thereby.

4. In justice to the petitioner(s), the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of access control described in the petition should be approved.

The Subdivision Committee recommends approval.

4/3. VAC2000-00016 - City of Wichita, c/o John Philbrick; JBR Associates (Fenix company) and Greg Ferris request to vacate street right-of-way.

LEGAL DESCRIPTION: Osage Street from the North line of 2nd Street to the South line of McLean Blvd. with 35 feet of street right-of-way to be vacated to each of the adjoining property owners.

LOCATION: The 400 block of North Osage, between 2nd Street North and McLean Blvd.

REASON FOR REQUEST: To provide additional surface parking for 802 W. 2nd (Fenix Company) and 740 W. 2nd (City of Wichita)

The applicants are requesting to vacate a portion of Osage Street right-of-way to provide extra surface parking for the adjoining properties. This request is in conjunction with the sale of City property to Fenix Company for expansion of their building and business west of the existing Osage Street right-of-way. The contract for the sale of this property outlines several requirements, conditions, and restrictions, which include, but are not restricted to:

1. that there shall be no access between the property and McLean Boulevard,
2. that the property shall have a minimum 30-foot building setback from McLean Boulevard right-of-way,
3. that a minimum 20-foot permanent landscape easement shall be installed on the north 20 feet of the property,
4. that the property and parking lot be properly screened, AND
5. that the property shall not have outdoor advertising signs, portable signs, banners, pennants, or string-type lighting.

The ownership of the west half of the right-of-way shall revert to Fenix Company, Inc., Heating and Cooling, while the east half shall be retained by the City of Wichita for use as parking with their facility at 740 W. Second Street.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time May 24, 2000, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described portion of street right-of-way, and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of street right-of-way described in the petition should be approved, subject to the following conditions:

1. The applicants shall dedicate complete access control along the north boundary of the vacated right-of-way.
2. The applicants shall maintain landscaping and screening consistent with the properties to the west and east, as stipulated in prior agreements between Fenix Company, Inc. Heating and Cooling and The City of Wichita.
3. The applicants shall submit, by separate instrument, a joint access agreement between the two adjacent property owners for use of the joint parking area (previously Osage right-of-way).
4. The applicants shall submit a guarantee for the removal of curb returns along 2nd Street and the construction of a single private shared access driveway.
5. The applicants shall dedicate, by separate instrument, a utility and drainage easement that includes all the existing street right-of-way.
6. The applicants shall file a restrictive covenant that ties the following parcels together:

Odd Lots 111 through 121, together with the east 7.5 feet of the vacated alley adjoining said lots on the West, and the West 20 feet of vacated Osage adjoining on the East, on Osage; TOGETHER WITH

All of Odd Lots 123 through 131, together with the East ½ of the vacated alley adjoining said lots on the West and the West 20 feet of vacated Osage adjoining said lots on the East; TOGETHER WITH

The East 80 feet of Lots 133 and 135, together with the East 7.5 feet of the vacated adjoining said lots on the West, all on Osage; AND

The East 33 feet of the West 45 feet of Lots 133 and 135, on Osage.

The Subdivision Committee recommends approval, subject to the following conditions:

1. The applicants shall dedicate complete access control along the north boundary of the vacated right-of-way.
2. The applicants shall maintain landscaping and screening consistent with the properties to the west and east, as stipulated in prior agreements between Fenix Company, Inc. Heating and Cooling and The City of Wichita.
3. The applicants shall submit, by separate instrument, a joint access agreement between the two adjacent property owners for use of the joint parking area (previously Osage right-of-way).
4. The applicants shall submit a guarantee for the removal of curb returns along 2nd Street and the construction of a single private shared access driveway.
5. The applicants shall dedicate, by separate instrument, a utility and drainage easement that includes all the existing street right-of-way.
6. The applicants shall file a restrictive covenant that ties the following parcels together:

Odd Lots 111 through 121, together with the east 7.5 feet of the vacated alley adjoining said lots on the West, and the West 20 feet of vacated Osage adjoining on the East, on Osage; TOGETHER WITH

All of Odd Lots 123 through 131, together with the East ½ of the vacated alley adjoining said lots on the West and the West 20 feet of vacated Osage adjoining said lots on the East; TOGETHER WITH

The East 80 feet of Lots 133 and 135, together with the East 7.5 feet of the vacated adjoining said lots on the West, all on Osage; AND

The East 33 feet of the West 45 feet of Lots 133 and 135, on Osage.

4/4. VAC2000-00017 - Arthur Lohrengel requests to vacate a 16-foot utility easement.

LEGAL DESCRIPTION: The 16-foot utility easement as platted on the North 195.92 feet of Lot 8, Sunnyside Gardens 3rd Addition, City of Wichita, Sedgwick County, Kansas

LOCATION: At the southeast corner of Elm and Gilda.

REASON FOR REQUEST: Development of the site

CURRENT ZONING: LC – Limited Commercial

The applicant is requesting to vacate a 16-foot utility easement so that he may develop this site.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time May 24, 2000, which was at least 20 days prior to this public hearing.

2. That no private rights will be injured or endangered by the vacation of the above-described utility easement, and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

B. Therefore, the vacation of the utility easement described in the petition should be approved.

The Subdivision Committee recommends approval.

4/5. **VAC2000-00018** - Thomas L. Scott and Dale Cooper, Attorney at Law, request to vacate a 5-foot utility easement and a portion of a 35-foot drainage easement.

LEGAL DESCRIPTION:

Drainage Easement: That part of Lot 2, Block 11, Fairway Meadows Addition, Sedgwick County, Kansas; described as commencing at the southeast corner thereof; thence N 0 deg 00'00" E along the east line of said Lot 2, 35 feet, said point beginning on the north line of a 35 foot drainage easement on said lot 2; thence N 89 deg 24'42" W along said north line, 72.0 feet for a point of beginning; thence continuing N 89 deg 24'42" W, 26.5 feet; thence S 72 deg 45'16" E, 25.5 feet; thence N 17 deg 14'44 E, 7.6 feet to the point of beginning.

Utility Easement: The 5-foot utility easement running in an east/west direction running through Lot 2, Block 11, Fairway Meadows Addition, the south border of which is approx. 35 feet north of the south line of Lot 2.

LOCATION:

South of 63rd Street South and west of 127th Street East

REASON FOR REQUEST:

House encroaches into easements.

The applicant is requesting to vacate a 5-foot utility easement and a portion of a 35-foot drainage easement. A portion of the residence located on this lot encroaches these easements, which adversely effects the marketability of the title to this property. The encroachment also prevents further improvement of this property.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time May 24, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described utility easement and portion of drainage easement, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the utility easement and portion of the drainage easement described in the petition should be approved.

The Subdivision Committee recommends approval.

4/6. **VAC2000-00019** - Daniel and Mary Weeler and Capitol Federal Savings, c/o Michele Hunt request to vacate a 12-foot utility easement.

LEGAL DESCRIPTION:

The south 12 feet of Lots 6, 8, and 10, except the west 26.625 feet of Lot 6, all on Second Street, in Sargent's Addition to Wichita, Sedgwick County, Kansas, EXCEPT the west 12 feet of said easement.

LOCATION:

South of 2nd Street North and west of Crestway (237 N. Crestway)

REASON FOR REQUEST:

House and garage built over easement.

The applicant is requesting to vacate a 12-foot utility. A portion of the residence and a garage were built on this easement. In order to obtain a clear title, this vacation must be obtained.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time May 24, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of a utility easement, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of utility easement described in the petition should be approved, subject to the following condition:
1. The applicant shall file a Hold Harmless Agreement for the existing garage structure built over the north-south 12-foot utility easement.

The Subdivision Committee recommends approval, subject to the following condition:

1. The applicant shall file a Hold Harmless Agreement for the existing garage structure that is built over the north-south 12-foot utility easement.

4/7. VAC2000-00020 - Larksfield Place, c/o Frank Rajewski; City of Wichita, Sedgwick County, Kansas and MKEC Engineering Consultants, c/o Greg Allison, P.E. request to vacate a portion of a drainage easement.

LEGAL DESCRIPTION: All drainage easements within Larksfield Place Addition, an addition to Wichita, Sedgwick County, Kansas

LOCATION: South of 29th Street North and east of Governour

REASON FOR REQUEST: Construction of a new building

The applicant is requesting to vacate all drainage easements on the Larksfield Place plat so that a building can be constructed on this site. The drainage system will be maintained as a private system.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time May 24, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described drainage easements, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the drainage easements described in the petition should be approved, subject to the following condition:
1. The applicant shall pay the remaining portion of the Special Assessment assigned for the construction of the existing drainage system.

The Subdivision Committee recommends approval, subject to the following condition:

1. The applicant shall pay the remaining portion of the Special Assessment assigned for the construction of the existing drainage system.

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- 4/8. **VAC2000-00021** - Cambridge Owners Association, Inc. c/o Fred Hanley, MKEC Engineering Consultants, c/o Greg Allison, P.E. request to vacate a portion reserve for use as a trash port.

LEGAL DESCRIPTION: A portion of Reserve "A" within Hanley 2nd Addition, an Addition to Wichita, Sedgwick County, Kansas, more particularly described as follows:

Commencing at the Southwest corner of Lot 4, Block 1 of said addition; thence N 36deg38'04" E, 20 feet along the west line of said Lot 4 to the point of beginning; thence N 53deg21'56" W, 30 feet; thence N 36deg38'04"E, 40 feet; thence S53deg21'56"E, 30 feet to a point on the West line of said Lot 4; thence S36deg38'04"W, 40 feet to the point of beginning.

LOCATION: South of 21st Street North and east of Webb

REASON FOR REQUEST: To use as a trash port for Lot 4, Hanley Second Addition

The applicant is requesting to vacate a portion of a platted reserve for use as a trash port for the adjoining residential lot.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time May 24, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of Reserve "A", and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of Reserve "A" described in the petition should be approved.

The Subdivision Committee recommends approval.

ZONING:

5a. **Case No. ZON2000-00013** - Cherrywood Construction, c/o Gene Vitarelli (owner); Mark Savoy (agent), request a zone change from "SF-6" single-family residential to "TF-3" Two-Family Residential; and

5b. **Case No. CON2000-0009** - Cherrywood Construction, c/o Gene Vitaralli (owner); Mark Savoy (agent), request a Conditional Use to allow the construction of two duplex residential structures on property described as:

Lot 16, Cumley's Addition, Sedgwick County, Kansas. Generally located south of 31st Street South on the west side of Walnut.

BACKGROUND: Initially, the applicant filed a zone change and Conditional Use request in order to permit a multi-family development. The applicant has since withdrawn the Conditional Use request that proposed to build a duplex residential structure on one lot (110' x 152' with a ten (10) foot easement) instead of two duplex units on one lot. The applicant had requested approval of "TF-3" Two-Family Residential zoning on 0.38 acres of platted property currently zoned "SF-6" Single-Family Residential. The application area is a rectangular shaped parcel and is located on the west side of Walnut and south of 31st Street South (see map).

Access to the property is currently from Walnut. The property surrounding the application area is zoned "SF-6." There are three duplexes located to the east and north of the application area. Each of the three duplexes is located on lots that are 83 feet wide.

Currently, the Unified Zoning Code (UZO) requires one off-street space per dwelling unit so that off-street parking would be required. The applicant can provide the required off-street parking by using the garage and driveway.

Due to neighborhood concerns, this request from deferred from the MAPC meeting scheduled for May 25, 2000. A letter and petition, containing 12 signatures, were submitted in opposition. On June 7, 2000 the District Advisory Board (DAB) for District IV considered this request. The area residents in attendance did not want either a duplex or renters in their

neighborhood, believe a duplex will devalue their property values and have concerns about increased crime. Following comments by the MAPD Planner, agent and area residents, the DAB voted 9-1 to recommend disapproval of the request.

CASE HISTORY: The property was platted in 1960 as part of the Cumley's Addition.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-6" Single-Family Residential	Vacant Lot
EAST:	"SF-6" & "TF-3"	Single-Family & Duplex
SOUTH:	"SF-6" Single-Family Residential	Single-Family Residential
WEST:	"SF-6" Single-Family Residential	Single-Family Residential

PUBLIC SERVICES: The site has access from Walnut Street; a paved two-lane residential street. Traffic volumes are not rated. Water and sewer services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the application area as "low density residential. "This residential category provides for the lowest density of urban residential land use and consists of single-family detached homes, zero lot lines units, cluster subdivisions and planned developments with a mix of housing types that may include townhouse and multi-family units." The "medium density residential" category includes ... semi-attached dwelling units such as duplexes and townhomes.

RECOMMENDATION: Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED subject to the following conditions:

- a) The applicant will dedicate, by a separate instrument, another two feet along the western property line (for a total of 10 feet) for a utility easement.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The neighborhood is zoned "SF-6" Single-Family Residential and "TF-3" Two-Family Residential. The character of the neighborhood is one of mixed uses with single-family homes and duplexes to the north and east.
2. Extent to which removal of the restrictions will detrimentally affect nearby property. The nearby properties are zoned "SF-6" and "TF-3" and permit single-family and duplex uses. The addition of "TF-3" zoning (two dwelling units) will not have any noticeable detrimental impact for the neighborhood. A slight increase in traffic may be noted, however. The lot is less than one-half block from an arterial street, which will minimize traffic congestion within the neighborhood.
3. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request is consistent with the objective stating: "This residential category provides for the lowest density of urban residential land use and consists of single-family detached homes, zero lot lines units, cluster subdivisions and planned developments with a mix of housing types that may include townhouse and multi-family units."
4. Impact of the proposed development on community facilities: The projected impact on community facilities is minimal but will generate a minimal increase in additional traffic.

BARRY CARROLL, Planning staff, "Commissioners, the application area, which is located south of 31st Street South on the west side of Walnut. This request is for 'TF-3' and for the construction of a duplex. This case went before the District Advisory Board District No. 4 and there was a 9-1 vote to disapprove. Subsequently the case has been withdrawn at the applicant's request. I will entertain any questions that you might have."

KROUT "No motion is necessary. We just wanted to make sure that anyone here from the public who didn't get a notice understands that the case has been withdrawn."

HENTZEN "May I ask a question? Barry, I was down there and looked at that. Can you tell me why you thought the DAB voted 9-1 against this application?"

CARROLL "There was a neighborhood petition in opposition signed by about 17 neighbors. Basically, they thought a duplex was not appropriate for their neighborhood and that it would change the character of the neighborhood. Some of the discussion was that they did not want renters in the neighborhood and felt like it could potentially devalue their properties."

HENTZEN "Did they realize that right across the street there is a whole world of duplexes?"

CARROLL "Yes, well the Planning Department was recommending approval on this case."

HENTZEN "Well, I should hope so."

6. **Case No. ZON2000-00015** - Sedgwick County zone change from "SF-20" Single-Family Residential to "LI" Limited Industrial for use related to applicant's construction landscape business, described as:

The East 600 feet of: Beginning 1376.85 feet South of the Northeast corner of the Northeast Quarter of Section 1, Township 28, Range 2 West; thence South 702.22 feet; thence West 1241.03 feet; thence North 702.22 feet; thence East 1241.03 feet to the beginning, except the East 40 feet for road. AND

The East 600 feet of:

Beginning 2079.07 feet South of the Northeast corner of the Northeast Quarter of Section 1, Township 28, Range 2 West; thence South to a point 128.77 feet South of the Northeast corner of the Southeast Quarter; thence West 1240.04 feet; thence North 639.68 feet to a point West of the beginning; thence East 1241.03 feet to the beginning, except the East 40 feet for road. Generally located 1/4 mile south of Pawnee on the west side of 119th Street West.

BACKGROUND: The applicant is requesting a zone change from "SF-20" Single Family to "LI" Limited Industrial for an 18-acre tract located on the west side of 119th Street West approximately one-fourth mile south of Pawnee. Although the property is zoned for large-lot residential use, it is being used currently as a construction sales and service establishment for the applicant's landscape business. This business has evolved as the applicant has reoriented his activities from traditional agricultural use of the property to focusing on his landscape contractor's business.

Construction sales and service is first permitted in the "GC" General Commercial zoning district unless the business is primarily a retail business and not a wholesale or service business. In that situation, it is a permitted use in the "LC" Limited Commercial zone. The type of business in operation would not qualify it as being primarily a retail business. The applicant is requesting the "LI" zoning district.

The application area is located in an agricultural area that has "SF-20" Single-Family zoning surrounding it on all sides. The nearest development is Granview Subdivision under development one mile north, and DP-142 Pawnee Mesa Residential C.U.P. (Hunter's Ridge) that is located one-half mile to the northeast. Both of these areas are within the corporate limits for Wichita. The only non-residential use near the property is the future site for a church on the northeast corner of 119th and Pawnee, zoned "SF-20." The Calfskin Creek borders the property to the west. The area requested for "LI" zoning is outside the FEMA 100-year floodplain for the Calfskin. The applicant owns additional land to the west that lies within the floodplain.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-20" Single-Family	Agriculture, farm
EAST:	"SF-20" Single Family	Agriculture
SOUTH:	"SF-20" Single Family;	Agriculture
WEST:	"SF-20" Single Family	Agriculture, Calfskin Creek

PUBLIC SERVICES: Access to the property is via 119th Street West, a two-lane arterial paved to county standard. Traffic volumes in 1997 were low, rated as 2,360 ADTs for the segment of 119th south of Pawnee. Volumes are predicted to increase to approximately 9,000 by 2030. The 2030 Transportation Plan shows 119th being widened north of Pawnee to Maple from two lanes to four lanes; this improvement is not included in the C.I.P. for 2000-2009. South of Pawnee, it remains a two-lane facility.

City water and sewer services are not available west of 119th at the current time. The nearest water line is 16" line that is 1/4 mile east of Pawnee and 119th W. The nearest sewer mains that could possibly be extended are a 12" main that is 1 1/2 miles east of Pawnee and 119th W, or a 12" main that is 1/2 mile north and 1/3 mile east of Pawnee and 119th W.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" in the 1999 *Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for low-density residential use, and places it beyond the 10 Year Urban Service Area, but within the 30 Year Urban Service Area. The area to the north, east, and west of the application area is shown for low-density residential also. The area to the south is identified as remaining in rural use. No land is shown along 119th as industrial except over a mile to the north between Kellogg and the abandoned right-of-way of the Kansas Central Railroad, and over 1 1/2 mile to the south between MacArthur and K-42.

The "Industrial Locational Guidelines" contain three points. These are:

- Industrial areas should be located in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility trunk lines, rail spurs, airports and as extensions of existing industrial uses.
- Industrial traffic should not feed directly into local streets in residential areas.
- Industrial uses should be generally located away from existing or planned residential areas, and sited so as not to generate industrial traffic through less intensive land use areas.

While the site is along a future major arterial, it conflicts with the first guideline of being an extension of existing industrial areas. The requested rezoning fails to conform to the third guideline since it is located in an area being developed as a low-density residential area.

The first available zoning district that would allow construction sales and service is "GC." There are six locational guidelines for commercial use. These will be discussed to determine the conformance of the application area to potential "GC" use.

- Of the six locational guidelines for commercial use, the proposed request conforms to the required location along a major arterial street, and presumably ingress and egress could be structured during the platting process to avoid traffic congestion.
- It conflicts with the guideline that commercial uses should be located in compact clusters or nodes versus extended strip developments.
- It is inconsistent with the guideline that commercial uses should be located in planned centers or nodes, should be guided to other appropriate areas such as the CBD fringe, segments of Kellogg, or established areas of similar development, and areas where traffic patterns, surrounding land uses and utilities can support such development.
- It adheres to the guideline of not directing commercial use onto local residential streets.
- No site plan was provided to evaluate whether the site design guideline could be met for mitigating noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses. Currently, the property appears to be developed in a neat manner. Presumably, site design standards could be required to ensure compliance with this criterion.

RECOMMENDATION: The introduction of industrial zoning at a mid-point location along 119th between Pawnee and 31st Street South introduces industrial use adjacent to an arterial being developed for residential use and being shown on the Comprehensive Plan for low-density residential use. The lack of public water and sewer service to the site is another factor discouraging this application. There is no significant factor pointing to "LI" being an appropriate use except that the current use has evolved to need "LI" or "GC" zoning in order to expand its landscape construction business. The Comprehensive Plan has identified the Kellogg corridor as an appropriate location for this type of use.

Even when considering the more restrictive classification of "GC," there are more factors weighing against this rezoning than recommending in its favor, particularly because it is introducing commercial use into a mid-point location where previously the land has been used for agriculture. The transition to urban development has followed the pattern of low-density residential. In addition, construction sales and service is considered a use that does not blend well with residential use. Typical operations have a lot of heavy equipment (noise), rely on outdoor storage of equipment and supplies, and require a large amount of land, making adequate screening and buffering expensive.

Based on these factors and information available prior to the public hearing, Staff recommends the application by **DENIED**. This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The land in the immediate vicinity of the property is used for agricultural purposes. The character of urban development on the eastern side of 119th to the north of the application area is low-density residential. The only non-residential use being developed nearby is a church, which is a permitted use in all residential zoning districts. The property to the west is located in the Calfskin Creek floodplain. The land to the west of the Calfskin along 135th Street West, the next major county line road, 135th Street West, is in agricultural use with a few large-lot residential uses.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be used agriculturally or in low-density residential use. This would conform to the existing development pattern and the Comprehensive Plan.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The change to "LI" Limited Industrial or "GC" General Commercial would introduce non-residential uses that are incompatible with low-density use. It would provide an opening to encourage other non-residential uses to gravitate to the vicinity.
4. The length of time the subject property has remained vacant as zoned: The property has been in agricultural use and is converting to a landscape construction business.
5. The relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approving "LI" or "GC" zoning benefits the applicant by not requiring him to relocate his growing business into an area already zoned or more appropriate for this type of use, at the expense of the general public.
6. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed request is not in conformance with the Wichita Land Use Guide of the Comprehensive Plan. The request fails to comply with all locational guidelines for industrial use except not directly using local residential streets for access. The request also fails to comply with the commercial locational guidelines of not locating within commercial clusters or nodes or gravitating to the established areas of similar use or where traffic patterns, surrounding land uses and utilities can support such development.

7. Impact of the proposed development on community facilities: Traffic impact should be minimal. Sewage impacts would be minimal if adhering to a criterion of domestic water level generation and proper drainage/floodplain management. However, greater consumption of water would require extension of sewer lines to serve the site.

DONNA GOLTRY, Planning staff, "This is a request for 'LI' zoning on 119th Street West. At the applicant's request, the item has been deferred for two weeks until June 29."

KROUT "Again, we believe that we have notified all of the people who were involved in this, but if anyone is here on this case, it has been deferred for two weeks. We need a motion to defer it."

MOTION: That the item be deferred for two weeks to the June 29, 2000 meeting.

JOHNSON moved, **OSBORNE-HOWES** seconded the motion, and it carried unanimously (10-0).

7. Case No. CON2000-00012 - Scott Hoskinson (Contract Purchaser/Applicant); Tom Holmes and George Holmes (Owners); Baughman Company, PA c/o Russ Ewy (Agent) request a Conditional Use permit to allow sand and gravel extraction on property described as:

The West Half of the Southwest Quarter of Section 15, Township 26 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas EXCEPT the South 735 feet thereof TOGETHER WITH the East 1100 feet of the South 735 feet of said West Half except that part taken for the road. Generally located north of 53rd Street North and east of Ridge Road.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting a Conditional Use to allow sand and gravel extraction on a 58.3 acre unplatted tract located north of 53rd Street North and east of Ridge Road. The subject property is zoned "RR" Rural Residential.

The attached site plan shows that the proposed sand and gravel extraction operation would create a 40-acre lake. The operational plan shows a fence around the perimeter of the entire property. Storage of equipment and material would not be permitted within 100 feet of the west property line and 50 feet of the north, south, and east property lines. The redevelopment plan shows that two single-family residences are proposed for the site, with one located east of the lake and the other located west of the lake.

The character of the surrounding area is agricultural with several existing sand and gravel extraction uses in the vicinity. The subject property is within a zone likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Also, information pertaining to wetlands from the Sedgwick County Soil Conservation District and Soil Survey of Sedgwick County indicates that the site does not contain soil commonly associated with wetlands.

The property east, west, and north of the site is zoned "RR" Rural Residential, and the property south of the site is zoned "SF-20" Single Family Residential. The properties to the east and west are used for sand and gravel extraction. The properties to the north and south are used for agriculture and are developed with farm-related single family residences.

Since the proposed lake uses most of the site and leaves little opportunity to develop the site with residential uses, the proposed use erodes the property's future tax base for Sedgwick County. Therefore, planning staff recommends conditions of approval which reduce the size of the extraction area and require a development plan showing one acre lots around the lake to be served by on-site water wells and septic systems.

CASE HISTORY: The site is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: "RR"	Agriculture; Single Family
SOUTH: "SF-20"	Agriculture; Single Family
EAST: "RR"	Sand and Gravel Extraction
WEST: "RR"	Sand and Gravel Extraction

PUBLIC SERVICES: This site has access to 53rd Street North and Ridge Road, both two-lane paved section line roads. Primary access to the site will be from 53rd Street North, with emergency access only from Ridge Road. 53rd Street North has current traffic volumes of approximately 2,500 average daily trips, and Ridge Road has current traffic volumes of approximately 3,800 average daily trips. The 2030 Transportation Plan estimates that these volumes will increase to approximately 8,500 and 6,200 average daily trips, respectively. Municipal water and sewer services are not currently available to serve this site, and the site is located outside the 30-year urban service area. Use of the site for sand and gravel extraction and, subsequently, single-family residences can be supported by on-site water and sewer service.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the recently adopted update to the Wichita/Sedgwick County Comprehensive Plan identifies this area as appropriate for "Rural" development, which accommodates agricultural uses as well as other uses common in rural areas, such as sand and gravel extraction, that are no more offensive than normal agricultural uses. In the "Rural" category, large lot residential uses, as proposed in the redevelopment plan, should be developed with provisions for future water and sewer services.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The applicant shall submit an operational plan for the area to be excavated. The area to be excavated shall be limited to a size that leaves sufficient land for future development of the site with one-acre lots around the lake. The extraction of sand and gravel on the site shall proceed in accordance with the operational plan approved by the MAPC. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan.
2. In order to assist in the enforcement of the operational plan, the applicant shall post a copy of the approved operational plan in the sand and gravel extraction office.
3. The applicant shall submit a development plan showing how the site could be subdivided into approximately one acre lots around the lake to be served by on-site water wells and septic systems.
4. Adjacent to the north, south, and west property lines of the application area, as indicated on the approved operational plan, a minimum 60-inch-high fence shall be constructed prior to the beginning of any extraction operation. A minimum 60-inch-high fence shall be constructed adjacent to the east property line at such time as the existing fence on the adjacent property to the east is removed. The fence and existing hedgerows shall be maintained at the locations depicted on the approved operational plan. Said fence shall be placed on steel posts which are not less than 7 feet tall. The posts shall not be set more than 16 feet apart.

The fence shall be a minimum height of 60 inches and shall be of the following types of construction:

- A. A 48-inch-high or higher chain link fence with 3 or more strands of barbed wire; or
- B. A 48-inch-high or higher solid metal or solid masonry fence with 3 or more strands of barbed wire; or
- C. A 48-inch-high or higher wood fence which may have cracks or openings not in excess of 5% of the area of such fence, with 3 or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gate at an angle not to exceed 160° facing away from the excavation.

5. The sand and gravel shall be extracted to at least a minimum depth of 6 feet below the normal water table, as determined by the Wichita-Sedgwick County Health Department.
6. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no more steep than five horizontal to one vertical.
7. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
8. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel, prior to the commencement of any sand and gravel extraction operation, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
9. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the Unified Zoning Code and amendments thereto.
10. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses which will permit the establishment of sod cover to help prevent erosion.
11. To minimize blowing soil in this area, overburden shall not be removed more than six months in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion.
12. The storage of equipment or stockpiling of sand is not permitted closer than within 50 feet of the north, south, and east property lines and 100 feet of west property line.

13. Nothing in the approval of this request shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the sand extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand, sand pumping and related equipment shall be removed from the subject site.
14. The approval of the Conditional Use is for a period not to exceed five years from the date of approval by the MAPC and/or the Board of County Commissioners and subject operation is to cease after that period of time with all equipment and materials associated with the operation removed from the premises. As part of the required operational plan, the applicant shall divide the site into 2 distinct areas for the purpose of showing phased excavation over time. The plan would show which area was to be excavated and at what time.
15. Hours of operation for the sand extracting business shall be limited to 6:00 a.m. to sunset.
16. All on-site water and sewerage facilities shall be approved by and constructed to the standards of the Wichita-Sedgwick County Health Department.
17. Any water wells needed to operate the facility must comply with the Water Well Construction Standards contained in Article 30 of the Kansas Department of health and Environment rules and regulations.
18. The applicant shall make the site available to the Wichita-Sedgwick County Health Department for the installation and management of groundwater monitoring wells.
19. Any on-site storage of fuels or chemicals must be approved by the Wichita Sedgwick County Health Department.
20. A drainage plan shall be submitted to and approved by the Sedgwick County Bureau of Public Works prior to starting the sand and gravel extraction. All of the area included within the fenced sand extraction operation shall be graded in accordance with the approved drainage plan.
21. The applicant shall be responsible for maintaining all operational roads in a sand or graveled condition and shall apply water or other acceptable dust retardant to minimize blowing dust.
22. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the sand and gravel extraction operation.
23. The applicant shall dedicate by separate instrument right-of-way for 53rd Street North and Ridge Road pursuant to Article 7-201(H) of the Wichita-Sedgwick County Subdivision Regulations.
24. The applicant shall dedicate by separate instrument a public drainage easement pursuant to Article 7-205(B) of the Wichita-Sedgwick County Subdivision Regulations.
25. Any violation of the conditions of approval shall declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is agricultural with several existing sand and gravel extraction uses in the vicinity. The subject property is within a zone likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Also, information pertaining to wetlands from the Sedgwick County Soil Conservation District and Soil Survey of Sedgwick County indicates that the site does not contain soil commonly associated with wetlands.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently used for agriculture and this use could continue given the agricultural character of the area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized by the various setback requirements and operational restrictions required as conditions of approval.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the recently adopted update to the Wichita/Sedgwick County Comprehensive Plan identifies this area as appropriate for "Rural" development, which accommodates agricultural uses as well as other uses common in rural areas, such as sand and gravel extraction, that are no more offensive than normal agricultural uses. In the "Rural" category, large lot residential uses, as proposed in the redevelopment plan, should be developed with provisions for future water and sewer services.
5. Impact of the proposed development on community facilities: The development of this property as a sand and gravel extraction operation should not have a significant impact on community facilities. On-site water and sewer services will be required to serve this site.

SCOTT KNEBEL, Planning Staff "This is a request for a Conditional Use to allow sand and gravel extraction on the site, located north of 53rd Street North and east of Ridge Road. The property is zoned 'RR' Rural Residential. You have a site plan in the back-up material. It shows that a 40-acre extraction would occur at this site and would have setbacks of 100 feet along Ridge Road and 50 along the other three property lines.

The redevelopment plan that is attached shows two single-family residences would be constructed on the lake site. The character of the area is primarily agricultural with some suburban residential and then also quite a few sand and gravel extraction operations in the area.

The Planning staff has recommended approval subject to the standard conditions. There are 20 or so of those. There are a few minor changes to what we have recommended. In Condition No. 1, staff has recommended that the extraction operation be limited to less than 40 acres and that is to permit further redevelopment of the site to preserve the tax base for Sedgwick County. Basically, as it is proposed, the site would provide for a future of just two homes; rather than especially along Ridge Road where you have a paved road could be a greater number of homes served by an access road, which is what we have seen in redevelopment proposals for other sandpits in other locations.

The other condition that I want to bring to your attention is that I think the applicant is going to ask for a different time period on Condition No. 14. Staff has recommended five years, due to the size of the site, being limited to 40 acres and then Condition No. 24. Staff is asking that this be preserved as a drainage easement since this is located north in the drainage basin for the Big Sough, which is being put to great scrutiny currently as the development of Ridge Road to the south occurs with commercial and other types of development.

This site is within the area of influence for the Maize Planning Commission. They did hear this case on June 1 and voted to recommend approval 6-0, subject to staff comments with the exception of that they did approve a period of 10 years. I was just speaking with the agent for the applicant. He had a little bit different understanding of the motion that was made at that meeting, and unfortunately we don't have any minutes from the Maize Planning Commission meeting, but I will let him address to you what he thinks the difference is, but primarily I think it deals with Condition No. 1, not being required to limit the size of the extraction operation and being able to extract the full 40 acres, for which they would have a water right to do. With that I will close and answer any questions."

HENTZEN "Lots of times when we hear these sand extractions, we get a big fight about water quotas or some quota from the State Department of something or other. Has that come up here? See, there is a sand extraction right east of this one."

KNEBEL "That's correct. Yes, this is like the previous sandpit cases that I have presented to you over the last several months. This case is also subject to receiving a water right from the Kansas Division of Water Resources. My understanding is that the applicant has made that application and perhaps has already received the water right. You can let the applicant answer that, but my understanding is that they have received a water right for their extraction operation."

MARNELL "I have a couple of questions. On No. 1, it is restricted to what size of acreage for the extraction?"

KNEBEL "We didn't really want to design the project for them, but if you take an acre out from around it, it basically cuts it in half, but we would be willing to look at some other options if they were reasonable."

MARNELL "Okay. The second question I had is on Condition No. 20. The drainage plan. Do you have an idea how burdensome that is? Is it easy or not to do one of those?"

KNEBEL "No, I really do not."

MARNELL "The reason I questions it is that this extraction operation is fundamentally creating a retaining pond where there wasn't one, so I can't see this property contributing to movement of water downstream, so the thought that this would improve anything that is going on seems frivolous."

KNEBEL "Well, the drainage plan is a standard condition to ensure primarily that the way the site is left doesn't create drainage problems to the neighboring property owners by sloping outwards towards their property at the end of the development."

MARNELL "The surface that they move around?"

KNEBEL "Right."

MARNELL "Okay, thank you. Any other questions? Thank you. We will hear from the applicant on this item first."

RUSS EWY "I am with the Baughman Company, agent for the applicant. Again, to be brief on this, I will bring up some of the same issues that I brought up at the last Planning Commission meeting on a similar type of request. We had several concerns with that case that carried over with this one.

We will start with Condition No. 1. We took this to the Maize Planning Commission meeting on June 1. In my opinion, it was clear that in the discussion, I made the plea that I would like to see Condition No. 1 modified that would allow us to

extract sand to the area depicted on the operational plan, which is 40 acres of which we have water rights to that 40 acres in order to obviously maximize the use of that property.

We believe that the redevelopment could be accommodated, based on similar past re-development plans, that we could accommodate several one-acre lots on the site, depending on, I guess, the creativity that we can come up with. However, we wanted to at least maximize the extraction operation before we entertained any type of redevelopment options. It was clear to me that Maize had no problems with that. There was substantial discussion by the Maize Planning Consultant concerning that item and I had felt simply that although we tried to do away with having to design 1-acre lots that Maize was in agreement with; first the time extension to 10 years. They had no problem in accepting the 40-acre excavation site, however they did agree with staff on us providing a re-development plan showing a 1-acre lot development. Again, that is simply my opinion on those proceedings. So, on Item No. 1, we would be seeking in the operational plan to remain as is, that we would be allowed the development of the 40 acres, or the extraction of the 40 acres with the understanding that we are going to have to design that 40 acres around several 1-acre lots.

The second issue that we had that I just briefly mentioned was the length of operation. Again, staff recommended 5 years, as was the case in the previous conditional use application. We are asking for a 10-year period. In addition to that time extension that we are asking for, in a case that you are going to hear later this afternoon, we had a similar condition, obviously. These are supposed to be relatively standardized conditions. In the sand extraction conditional use that you are going to hear later this afternoon, staff had offered the ability to do not only a 10-year time frame, based on the number of acres over ours, it is almost double the size of our operation, but it also allowed a clause 'or for a period not to exceed 10 years from the beginning of excavation'.

In reviewing that conditional use, the applicant and I sat down and discussed that. We would be asking for a similar type of condition. A 10-year time frame with a caveat that the time commence not from the approval of the conditional use, but from the time that we actually start excavating. The reason for that is the same reason that I gave at the last Planning Commission meeting that we simply want to avoid having to make an unnecessary reapplication for the same operation. So on Item No. 14, we would be petitioning the Planning Commission for an increase in the number of years of operation to 10 and at that that time frame commence at the time that we come in and begin excavation activities.

I believe it was discussed briefly at the last Planning Commission meeting concerning Item No. 24 of the staff comments as it relates to us dedicating a public drainage easement pursuant to the Subdivision Regulations. There was some discussion about staff saying that this was a very standard condition; however you will not find a similar condition in the forthcoming conditional use application. So, again, I think we will make a plea again to do away with that particular requirement based on the lack of precedent. I would be more than happy to answer any questions. I believe Scott passed out a letter from Mike Dealy of the Equus Beds Management District, which explains the state's perception of using these types of water bodies as public drainage. It obviously states that they are against it. What our concern has been all along is 'are we creating a Catch 22 by where the local authority is approving a conditional use with conditions that will prevent us from operating through the state permitting process. We believe that it does.'

MICHAELIS "Would you clarify that for me? Basically what you are saying is that you are okay with this letter so you would rather have the stipulation that it not be considered a drainage easement, taken out? Am I understanding you right?"

EWY "Right. What we are considering is in reviewing Condition No. 24 and what that does to the property, it was a concern expressed by the applicant that the permitting process beyond the local permitting process, the Department of Water Resources and Equus Bed management district, precluded the use of these water bodies, since they are directly affecting Equus Bed to be used for a larger public drainage use."

MICHAELIS "Okay, so if this item No. 24 was left in here and you go to the state to get your permit, they could say no based on that?"

EWY "That is our concern. There was discussion previously about the other condition requiring us to put together a drainage plan for county approval, which is standard. The drainage plan obviously takes into account that this property, this 60 acres must account for its own stormwater drainage, in that we have got to drain our 60 acres into our 40 acre lake, which is fine."

MICHAELIS "Okay, thank you."

OSBORNE-HOWES "I was just wondering, while Russ is up here, if Marvin could respond. I saw those more as questions, for example, why did staff put in No. 24 if there are other applications that don't require that? And the same about the 10 year from excavation."

KROUT "I would like to respond to that, thank you." The 10 years from excavation is something that is new and I don't necessarily have a problem with that or with something like that. Maybe there should be some limitation on when their ten years would start so it is not completely indefinite because this is an area that is going to be seeing more and more development pressure in future years, so if there is a resource there, I think it is time to try to get at it and get out, but some flexibility, I don't think would be a problem.

I do have a more serious problem with the request to omit No. 24, and maybe we have talked about this before and maybe if there is an omission in the other sand pit case, that was by staff's omission and the intent was that we have tried

to get a public drainage easement in all of these cases, particularly in this case, where we are in the Big Slough and the County Commission has recently had some discussions with developers in this general area about drainage problems and how they are going to be affected, and the possible use and benefit of being able to use these water bodies in the future to help control drainage and provide some retention for development that is going to be downstream.

Well before I came here, for over 20 years, the County Engineer has been asking for this condition to be required and it has been required by the Planning Commission. I don't know whether Russ remembers or was involved in all of the discussions when Mike Dealy used to come here regularly from the Equus Beds, but we used to have what we called the 'Mike Dealy/Jack Brown show'. The Health Department has indicated to this Planning Commission and maybe some of you have been in those meetings, but I do see an ex-Planning Commissioner who has been, the Health Department has indicated to you every time that despite Mr. Dealy's concerns, they monitor these with the water around the area of these pits.

They have not identified that opening up these areas and draining to them and using them as retention areas is a health hazard in terms of groundwater. Based on that, the Planning Commission has followed the advice of the County Engineer and the County Health Department and has required drainage easements as a standard requirement of all of these conditional uses. It is very disheartening to see us continue to take steps back from a process that we have had for so many years. And I think it will be a surprise to Mike Dealy and to Jack Brown both if we end up reversing the policy that we have had for the past 20 years. Maybe the ex-Commissioner would want to talk about that."

LOPEZ "Are you stating that it was an over-site on the upcoming agenda item for a sand extraction that this Item 24 wasn't included?"

KROUT "If it is not in there, it is meant to be in there."

KNEBEL "What has happened is that in the past, the condition has stated that a drainage plan would be required to be submitted and approved by the County Engineer. Through that drainage plan, the County Engineer has required a dedication of a drainage easement. In talking with Jim Weber about this issue in the past, he has indicated that that was his requirement. In the past two cases, this one and the one previous to that that was heard at the last meeting I spelled that out to bring it out because I knew it was an issue with the Equus Beds."

KROUT "And they have been, at some period of time, maybe when some of our previous planners were working, they didn't pick up that this used to be a standard condition that was explicitly in the conditions, just like you are saying now that we must have had a period of time where planners weren't picking up that information."

KNEBEL "Yes, and that is true, I have gone back and looked at several recently approved and it didn't explicitly state in the conditions of approval that a drainage easement would be provided, but it was required as a part of the drainage plan."

KROUT "As long as Russ is still up there and you did give me the floor, I would say, on the issue of re-development that the Development Plan is not a binding plan. He can draw you a picture of 1-acre lots, but there is nothing binding that is going to commit him to go back in and fill areas that he has excavated and it is probably unlikely that he will. I just want to let the Commission know that this is a very important point, I think, in areas that we think are going to be urbanizing in the future, is to retain some amount of land for future development so there is a tax base that is left and we don't just have a water body over an area that we are going to be providing water and sewer service to someday."

LOPEZ "Since we have the agent stating terms different from what we have from the Maize Planning Commission, which staff member was at the Maize Planning Commission?"

EWY "Scott."

LOPEZ "Well, Scott, what did you hear?"

KNEBEL "I do agree with him that the discussion with the Maize Planning Commission did seem to indicate to me that they were going to take a vote allowing a 40 acre extraction. However, when they made the motion, the motion was subject to staff comments with the exception of the 10 year time period with no mention of Condition No. 1, which would require the extraction area to be limited to something less than that."

LOPEZ "So, just for clarification, you are assuming that that was in their vote?"

KNEBEL "No. I didn't want to assume anything. The motion was quite clear that it was subject to staff comments."

LOPEZ "Russ was assuming that it wasn't in there."

KNEBEL "Well, I agree with Russ that when they were having their discussion that the discussion seemed to be leading to a motion that they would have made that would have allowed a 40-acre extraction; however, they did not mention that in their motion. I guess I was remiss by not following up to ask why they did not."

LOPEZ "Do you think it is appropriate that you get that verified before this motion is voted on? Marvin, do you?"

KROUT "No, unless you think it is important enough to be clarified, then you can ask for it to be deferred. I think you can decide whether it is an important issue for yourselves or not."

HENTZEN "We almost always have a drainage plan that is approved or disapproved by the County Engineer. If I understand that right, a drainage plan by the County Engineer is talking about the drainage from the application area to be properly handled. Is that right?"

KROUT "Yes."

HENTZEN "Okay. Now, we are extending that to say 'we might want to include a further demand that the water that comes from other places be forced into this lake. Is that what we are trying to say?"

KROUT "That is what we have been consistently asking for and were receiving all through these many years."

HENTZEN "And that is what the Equus Bed people are having trouble with?"

KROUT "Yes. And they have each time. And the Planning Commission and the County Commission over all of these years weighing the facts and the evidence as presented by the Equus Beds Management District and the Health Department has decided that it is better to keep the option open, but you can use that in the future for drainage. You don't have to, but you keep the option open and you know that when you do do a drainage plan for a basin like the Big Slough, you may want to and need to take advantage of that someday in the future."

HENTZEN "Do you think, Marvin, if it has been in effect for years and years, I suppose you are talking about 20 years...."

KROUT "Probably, yes. Probably when you were on the bench you approved a bunch of them."

HENTZEN "Probably did. But hind site is better than fore site. But anyway, has the Equus Beds management group had any indication that the sandpits over the Aquifer are any problem?"

KROUT "I would say that Mike Dealy would agree with Jack Brown that there is no local data to substantiate that there is a problem, but he still expresses his concern each time we give him the opportunity."

HENTZEN "I want to tell you that the safety of the Equus Beds is very important to me. I just realized that we can't take a lot of chances, but if they are making you do things that they have no justification for, you are going to do that once in a while, you know?"

But I just wanted to clear up what our drainage plan requirement is. It takes care of the area in the application area that you are trying to serve a further way of working in that drainage basin."

KROUT "Right."

MARNELL "Are there any other questions? Russ, I have a question for you. Did I misunderstand what you said having to do with the requirement No. 24 that if that was left in that somehow your next level of authority would turn you down because that was in there?"

EWY "That was the concern that was expressed to me by the applicant, yes."

MARNELL "Okay, it's just a concern."

EWY "Well, if you have the Department of Water Resources and the Equus Beds Management District that works in conjunction with one another to determine water rights and the management of these water bodies expressing concern on accepting outside drainage in these facilities, I just wanted to bring that to light."

As Marvin said, Planning Alumni from the Department may have forgotten various aspects of it. I have never made the argument that the drainage plan condition was never part of that, probably as part of some planners naivete, they probably assumed that since it was going to the County Engineer for approval, that if there were warranted easements needed at that time, that they would have gotten with the applicant and would have made those types of arrangements to take care of that.

And as far as the potential of this expanding and being a hotbed for future urban development, the staff report already states that it is well outside the 30 growth ring. If you recall, the application area that we discussed last time, we are almost landlocked on three sides. So, again, any type of re-development for an urban density residential development, even a suburban residential development near these ponds will require platting. And when we plat the property, we feel that that is the time for these types of easements.

But I think it has been long-standing policy that when the County Engineer reviews these applications, they take into account that the nature of that site in relegating whether or not that warrants any type of public drainage easement or any other type of covenant that allows for public drainage or temporary storage of stormwater run-off. So we are looking for that type of relief, if nothing else that we are simply allowed to take care of drainage with the appropriate body, Public Works."

MARNELL "Well, I read your characterization of that. This was a poison-pill type piece on here and it sounds like they have routinely having this kind of provision in it and there are extraction pits out there, so they must be getting approved at the next level."

EWY "And that is possible. This site does have water rights. I am not sure how those water rights can be pulled back or dealt with. We simply feel that that condition is perhaps overkill, that if there is a public need for public drainage for this particular water body, Jim Weber will make that stipulation of our permit."

WARNER "If this was approved as far as this drainage easement, when would that happen? At platting? How could you decide where this thing is going to be at this point in time?"

EWY "Prior to operation, we will have to fulfill all of these conditions, state permitting, local permitting. As part of those steps, we will have to do a drainage plan and submit that to Jim Weber for his approval. At that time, like I mentioned, is when I believe historically they have reviewed for the need of any other types of temporary drainage covenants or any type of easements. So before we would be able to extract sand, strip dirt, or do anything at this site, we would have to have all of these conditions met and in place."

MILLER "Just as additional clarification, one of the criticisms that we have gotten, particularly on sand pits is that there is 25 conditions for these, and we have heard, over the years that that is way too many; there has to be something wrong with this if you are putting 25 conditions on it."

So either the second one, which is coming up that doesn't have that specific provision about the easement on it, was left out either as an omission, or number two, the thinking was that because it has the language about the drainage plan being submitted to the Director of Public Works that the assumption was that they would ask for the covenant as part of that drainage plan. However, if we need this specific covenant language in there, we would be saying 'let's put it in there' because Gary Wiley has done more sand pits as an agent than anybody around here. I have not heard of anyone getting a permit denied by having that condition in here after this has been approved by the Planning Commission. Have you heard of anybody turned down? So, as Marvin says, historically we have asked for that, we have gotten it."

KROUT "As Commissioner Hentzen says, 'the issue of the drainage plan is a separate issue from the potential of a larger community use of that area as part of an area-wide drainage plan. So, it really should be two separate conditions and I think if we went back over the last 20 or 30 years of conditional use permits you would see 90% of them have that. Apparently we hit a period where we didn't pick it up and then usually what happens is that we have turn-over, and usually what happens then is that the next planner picks up the very last case that was done and that case doesn't have it, but if you go back to when you started working here, Russ?"

EWY "I believe there were several new planners new in the Spring of 1995."

KROUT "Well, go back to before 1995 and you probably will find a pretty consistent pattern where we have required drainage easements."

WARREN "Marvin, when we talked about 'dedicated by separate instrument', normally that would dictate that we have a meets and bounds description or some kind of a legal description. In this case, are you saying that it is a blanket-type thing we are asking for that will determine, in the future, where it may be?"

KROUT "I think so. Gary Wiley, who has submitted some of those as instruments can probably tell you whether or not the whole area has been defined. It may be that something less than that, outside of the excavation area has been defined, but it is just a simple instrument that defines these."

WARREN "You think it might be a blanket easement?"

KROUT "Maybe."

WARREN "Okay."

OSBORNE-HOWES "I probably started this, but I think we have gotten a little far off this and now we are discussing the case before we have really heard from everyone, so I am wondering if maybe we shouldn't see if there are other people to speak to this."

MARNELL "Is there anyone else who is in favor of this that wishes to be heard?"

HARLEY MILES "I live at 3117 Keywest Court. This water is one of my pet peeves, as Marvin will say. We never allowed any water from anywhere besides the sandpit go into a sandpit as long as it was in operation. The reason for that is because Mr. Dealy wanted to put wells around the sandpit to test it and have the sand pit operator test the water at his expense."

Now, when you get into development, if they want to test wells and want to do their thing, that's fine, but for a sand operator to be stuck with water coming off a hog farm like I was, and you say that then I was responsible for it, only a damn fool would do that."

The property on the east side of Meridian, some of that water comes off the hog farm with about 75 hogs, and drains about 6,000 acres. That water is contaminated, you can't help it. But he wanted us to be responsible for that, and that is when this really started. It was a long time ago. He used to come down here and give 30-minute speeches about it. But the County Engineer, as far as I know, has never used a sandpit it as a drainage area until it was developed, and then the ground that the development is on is all drained into that lake. Marvin may correct me if I am wrong there, but we don't drain anywhere else. That is my two cents' worth. I think this is a good project. It is a good place for a sandpit and it doesn't bother too many people. "

JOHNSON "Harley, a quick question. If that was not on there, and I see your point of something draining in there that you don't want to drain in there, but let's say some development occurs around this sandpit later and it is by a different owner, how does that different owner get a green light to drain into that sandpit?"

MILES "When you plat it, they will make you drain it."

JOHNSON "I'm saying the sandpit itself is not platted, it never will be or whatever, and..."

MILES "There will never be no water going into it, then."

JOHNSON "That's right and that is the only problem I see with it."

MILES "There will never be any water unless the County wants to pick up the tab if it gets contaminated. You wouldn't want to own a piece of property and let somebody drain in on you and you not know what comes into it. Thank you."

MARNELL "Is there anyone else to be heard in favor of this item? Is there anyone to be heard to opposition to this item?"

JANET HOSKINS "I live at 1780 3100 Avenue in Chapman, Kansas. My husband and I own the property adjacent to the east side of the parcel that is under consideration. My family moved there in 1959 and we have lived there every since. First, let me say that I am not objecting to a sandpit because there are others in the neighborhood. We have two that are operating without problems.

I am objecting to the configuration of this proposed sandpit. As you see from the map over there, I have the property just east, (indicating) right there, and it appears that the access road is going to come right beside my house. I think this is going the wrong direction. There is a one-half mile of road frontage on Ridge Road and there is only a fourth of a mile on 53rd Street North. The road as proposed should not be there. It should be moved away from my home to Ridge Road. If you approve this permit, I ask that you do the following for the conditions to be imposed. His plan should be reversed because his plant is on the east side, which is closest to my house. It should be on the west side, right close to Ridge Road so he can exit right off of the scales right onto Ridge Road.

If you will notice down there on 53rd, there are 9 single-family unit homes down there. Having trucks coming in and out with 9 families exiting and entering 53rd Street North is an accident looking to happen. They should move the road and go out the west side. It should not be adjacent to any neighboring property, which they could put it right in the middle of the property there and go out to the west side. Heavy trucks create a large amount of dust; therefore the road should be paved whether it exits to the south or to the west. Paving the road would eliminate some of the road dust. I ask that you specify that the entrance be placed on Ridge Road. If that is not an option, then I ask that the road be placed adjacent to the seller's home and not my home.

No. 2, contaminated water run-off should not be allowed to enter other's property. Additionally, the sandpit should not be allowed to change the flow of surface water so that it enters another's property in a quantity greater than the natural flow.

No. 3, a plan should be in effect to prevent sand and dirt from blowing onto other property. The operator should be prevented from stripping the vegetation in excess of his immediate needs to operate the sandpit. He should not be permitted to sell the topsoil before he is ready to pump sand from that area. Stripping topsoil far in advance of the pump exposes the neighbors to the potential of blowing sand and dirt. That problem can be reduced by requiring the operator to keep a natural cover in place until he needs to pump in that area.

In conclusion, all I am asking for is a plan to ensure that this sandpit is a good neighbor. We have been a good neighbor of the Holmes for many, many years, since 1959. I would like to extend that. Move and pave the road, control the water and control the potential for blowing sand and dirt. Are there any questions for me? Thank you."

MARNELL "Thank you. Is there anyone else to speak in opposition? If not, the agent has two minutes for rebuttal."

EWY "To address the lady's concerns, I believe that the staff comments address most of those issues as far as the length of time before sand extraction can commence, the length of time that you have to strip the soil on top. That has been addressed. As far as blowing sand, that also has been addressed in the standard conditions. If you recall from last time, we have a companion application to the south. Our whole effort was to bring those two points of entrances as close as possible. As you can see, here is our exit from the site and here is the entrance to the southern site. The whole idea was to minimize truck traffic between those two sites as well as basically maintaining somewhat of the traditional sand truck traffic on 53rd North as opposed to bringing it back up onto Ridge Road.

The location of the plant site being in the interior of our site, we felt that was the best guess as keeping it the furthest away from the maximum amount of homes. What we could do to at least make an attempt to address her concerns is to place our entrance, we have 110 feet approximately, is what that pan handle measures, to keep our access road on the western portion of that, the maximum distance away from the eastern property line, which would require a minor revision of the site plan. I would be more than happy to answer any questions."

JOHNSON "How wide of a drive would you propose in there?"

EWY "I think we can do with a 24-foot all-weather drive. I think the site plan depicts a 30-foot drive just to get us in the ballpark so we could maintain a 70-foot separation. We will maximize that separation."

HENTZEN "Russ, I believe the lady asked that the driveway would be paved. Are you agreeing to that?"

EWY "No, and I won't make a confusing statement like I did last time. This will be improved to an all-weather standard similar to other extraction operations, with the assurance that we have to maintain that road, water truck, what have you to minimize any type of dust during hot, dry days."

HENTZEN "Approximately how long would that driveway be on the panhandle there?"

EWY "Seven hundred-thirty five feet, I believe. With probably an equal 800 feet up to the plant site above the pan handle."

WARREN "Russ, we have spent a lot of time on Item No. 24. How do you see that separate instrument as being conveyed? Do you see that as a broad blanket easement? Do you see that as something you can decide where it is going to be?"

EWY "We see that instrument as something that is typically designed around a subdivision's lake, the detention ponds."

WARREN "So you see no application for it at this point, then."

EWY "I don't think you can do it as a blanket. You wouldn't be able to do it as a blanket easement. I don't really know if you could or couldn't. I think typically what they would be looking for is just to identify the lake as well as ingress and egress for the flow in the form of a drainage easement. Now, it is my understanding that a lot of times the County Commission has accomplished this feat in a similar manner by working with the applicant on a restrictive covenant. Perhaps that is what Mr. Miles was talking about."

OSBORNE-HOWES "Does the applicant own the corner property?"

EWY "Yes. Well, two brothers own this property. One brother, George Holmes, owns the south 735 feet approximately. The other applicant, Tom Holmes owns this 58-acre tract. Our applicant, the sand operator will be Scott Hoskinson, who is the contract purchaser for the entire 58 acres of Tom's property as well as the panhandle off of George Holmes'."

OSBORNE-HOWES "The reason I was asking is is there any way that that could be moved further to the west?"

EWY "As a matter of fact, we had a tentative agreement to purchase 200 feet of width. The panhandle being 200 feet when we re-negotiated that contract, the seller was only willing to sell the east 110 feet, so we have a pretty firm commitment that that is the only location for a driveway on that gentleman's property."

OSBORNE-HOWES "Could I see the aerial? Where are the homes located?"

EWY (Indicating) "Right here."

OSBORNE-HOWES "His home is there...and"

EWY "Uh huh, and (indicating) and pastureland."

OSBORNE-HOWES "And the other lady who spoke, whose name is similar to the applicants, Hoskinson..."

EWY "Mrs. Hoskins."

OSBORNE-HOWES "Okay, I was wondering about that, too, but where is her house?"

EWY (Indicating) "I believe here. I believe there is a house here, two houses here and another house here."

HENTZEN "Where is the drive way for that existing pit?"

EWY (Indicating) "Right here, I believe. No, I'm sorry, it comes up here."

OSBORNE-HOWES "Where is her house again? I guess I am having a hard time here."

HOSKINS (From the audience) "Our property is 300 feet wide, so I am not quite at the far east side of it."

Hoskins came to the podium.

HOSKINS (Indicating) "About right there."

OSBORNE-HOWES "The far west side?"

HOSKINS "No, the far east. I am not west, I am sort of in the middle of the 300 feet. That property right there is a boundary line. That is 300 feet from east to west."

OSBORNE-HOWES "And where is your house?"

HOSKINS (Indicating) "Right there."

KROUT "Right in the middle."

OSBORNE-HOWES "Thank you."

HOSKINS "I just don't see why, when there is not a house on that whole half-mile, why the road can't come out the west side and not even be close to me. Or, if it is close to me, it should be paved because sand trucks, no matter whether you pave it or make it an all-weather road, they create dust. And the wind always blows in Kansas and we are not going to stop that."

MICHAELIS "Is that sandpit to the east there currently in use?"

EWY "Yes."

MICHAELIS "Is that owned by a different owner?"

EWY "There are two sand extraction operations. (Indicating) Is this one associated?"

MILES (From the audience) "No, that is not associated."

EWY "Okay. (Indicating) There is a sandpit here, and there is a conditional use for the sandpit that comes down and follows the curve of the Big Ditch up in this area. Further sandpits throughout the area."

MICHAELIS "Is there a possibility, or has it been explored since you are going to put your plant right in the middle on the east side where you can go directly east off of your property onto that property and adjoin that other service road that is already there?"

EWY "I have not explored that. I would imagine the temperament between sand companies would be one that I don't know we would get very far with. I might ask Harley to come back up here to explain that one."

KROUT "It would need a standard condition that requires a joint access."

MICHAELIS "And that would put it closer to the other one you are talking about on the south that is coming up on the agenda in a minute, too."

EWY "That's true, but there again, I think there is going to be an inherent problem with trying to obtain that type of access."

HENTZEN "Russ, tell me again, what is the connection with this property and the one south of 53rd Street?"

EWY "The one south of 53rd Street is another approximately 60-acre tract. It has half of the water rights so we are only dealing with a 20-acre excavation area. This 60 acres was held by a private individual who wanted to have a private lake for his own recreational purposes built so it was a natural to team up with a sand extractor that is also in the area to excavate his lake for him, which is why I went through the whole discussion of the fact that this will never re-develop for a subdivision. You have heard people say that they didn't want subdivision around that lake.

So the connection is that we are going to have the same operator on both sites. For example, one could imagine that, depending on which pit opens first, one could stockpile certain amounts of strip material on one site versus the other. I am not sure how that would work. I am not sure what their development coordination is going to be, but they are going to be operated by the same sand extraction operation."

HENTZEN "Are there any other sandpits up there that are emptying onto Ridge Road? From a mile north to a mile south?"

EWY "Besides the one that is across the street, I can't think of any one that is very close to actually that type of distance away from Ridge Road."

OSBORNE-HOWES "Did you say other than the one across the street?"

EWY "Yes."

OSBORNE-HOWES "Where is it?"

EWY "This is an old, finished pit that you can barely see the fringe of. The question was how many other sandpits are draining onto Ridge Road and I said other than the one across the street I didn't know of any."

PLATT "Where is it? Are they operating or not?"

EWY "No. It is an old pit. But whether or not it drains onto Ridge Road, I do not have that information."

WARNER "We wanted access not drainage."

EWY "Oh, I'm sorry. That had access onto Ridge Road. And one could argue that unfortunately the operator was here in attendance and got a little discouraged with the Cellular Communication discussion and needed to leave, otherwise he could tell you some of the reasons why he directed us to put the access where it is other than the fact that we are tying the two operations together, whether or not he encountered any problems with area neighbors along Ridge Road when he had his access directly off of Ridge Road.

You can see, (indicating) here is the pumping station for that operation within 200 feet of the roadway. Whether or not that created problems that he would like to avoid in this application, I can't answer."

MARNELL "We will bring the discussion back to the Commission at this point. What is the pleasure?"

PLATT "I would like to ask the staff if they know where sand trucks go when they leave the site? Where do they go?"

KNEBEL "Primarily to road construction sites."

PLATT "I know where they go, how do they get there?"

KNEBEL "On paved roads, generally."

PLATT "I know, but which way would they go?"

KNEBEL "Primarily they are going to go to the east or to the south."

PLATT "But do they use Ridge Road?"

KNEBEL "I'm sure they do, but I can't tell you for sure."

KROUT "They probably take Ridge Road down to K-96."

KNEBEL "Yes, I would think so."

PLATT "Why not exit on Ridge Road then?"

KROUT "That is a good question."

MARNELL "What is the pleasure of the Commission?"

OSBORNE-HOWES "Just a comment. I am not really thrilled with this application as it stands overall, for a couple of reasons. One is I don't like where the entrance is to the site, I am concerned about the over-excavation. I am not saying that we shouldn't have a sandpit there, but I sure wouldn't support this without some changes."

WARNER "I want to go back to No. 1 on the recommendations. Unless I am missing something. Staff is saying that we are not platting this one but it looks to me like we are. We are requiring one-acre lots around the lake. If I understand this correctly, that means that that will take half of their excavation."

KNEBEL "Essentially, yes. It depends on how they would configure it, but essentially that would be the end result."

WARNER "So basically we are limiting their excavation and in effect dictating how they are going to plat this property ten years in the future."

KNEBEL "Well, we are asking for a plan to be approved to that effect, yes."

WARNER "Then I see why they are against it. I would be opposed to that if it was mine."

WARREN "I never did get it clear why we didn't have access to Ridge Road?"

EWY "Primarily the effect is that we are wanting to join and have as close proximity the entrances for both of this operator's sand plants, the northern one as well as the southern one. In order to truck material off of one site and store it on the other. There will be trucks running on both sides of 53rd Street. There is existing truck traffic on 53rd Street currently and there will be for another eight years or however long associated sandpits are operating."

WARREN "So mostly you just want to save the mileage that it would take to go around to another entrance?"

EWY "We just felt that that would be the best location for the operator without changing the traffic pattern in the area."

KROUT "Do the two entrances line up?"

EWY "No there is about a 200 to 300 foot jog. I don't think that that is going to be an incredibly difficult issue for our applicant. There was never a discussion at Maize on this issue, so we were kind of caught cold with why that access is an issue at this point, so I apologize for not having the ability to speak for the applicant on whether or not he has any problem with a retro entrance."

MARNELL "I have a question for the agent. Would you entertain having this deferred for two weeks?"

EWY "I think that would probably be prudent."

MOTION: That the item be deferred for two weeks.

CARRAHER moved **LOPEZ** seconded the motion.

OSBORNE-HOWES "I just want to make sure that the applicant knows why we are deferring this. Are we looking for some specific from them? I am supporting the deferral. Are we looking at issues regarding different locations for access, some resolution to some other questions?"

MARNELL "I can answer that my opinion from the chair is that it looks like there is considerable discussion involving item No. 24 and access to the property. Those were the two main areas of discussion. Oh, yes, and Item No. 1, having to do with the ability to use the land."

OSBORNE-HOWES "Thank you."

WARREN "I would hope that in this time frame that some consideration would be to open that up to Ridge Road, and/or maybe consider paving the existing drive."

OSBORNE-HOWES "That is a good idea."

MARNELL "Yes, good comment."

KROUT "Is it your intent to leave the hearing open to allow for any new information two weeks from now?"

MARNELL "Yes."

VOTE ON THE MOTION: The motion carried with 10 votes in favor. There was no opposition.

8a. Case No. CUP2000-00014 - Box Development, LLC, c/o Walter Morris (owner); Austin-Miller, P.A. c/o Tim Austin (agent); Don Arnold (agent) request amendment of Ridge Center Community Unit Plan; described as:

Lots 1-9, Hoskinson 2nd Addition, Wichita, Sedgwick County, Kansas; and

8b. Case No. ZON2000-00017 - Box Development, LLC, c/o Walter Morris (owner); Austin-Miller, P.A. c/o Tim Austin (agent); Don Arnold (agent) request zone change from "NR" Neighborhood Retail to "LC" Limited Commercial for Parcel 2; described as:

Lot 2, Hoskinson 2nd Addition, Wichita, Sedgwick County, Kansas;
and

8c. Case No. ZON2000-00018 - Box Development, LLC, c/o Walter Morris (owner); Austin-Miller, P.A. c/o Tim Austin (agent); Don Arnold (agent) request zone change from "NR" Neighborhood Retail to "LC" Limited Commercial for Parcel 8, on property described as:

Lot, 8 Hoskinson 2nd Addition, Wichita, Sedgwick County Kansas. Generally located on the southwest corner of 37th Street North and Ridge Road.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant is requesting an amendment to DP-242 Ridge Centre Community Unit Plan located at the southwest corner of Ridge Road and 37th Street North and zone changes for Parcel 2, a 0.9 acre tract, and Parcel 8, a 1.2 acre tract, to "LC" Limited Commercial. According to the applicant, there is a proposed veterinary clinic for Parcel 2 and a strip center for Parcel 8.

Ridge Centre C.U.P. was approved May 26, 1999. The applicant had requested "LC" zoning for all nine parcels of the C.U.P. However, MAPC recommended and the Board of County Commissioners approved "NR" Neighborhood Retail, restricted to "GO" General Office use, for four of the nine parcels, including the two parcels submitted for rezoning in this request. The parcels approved for "LC" were situated closest to the intersection of Ridge and 37th Street North. The "NR" parcels were restricted to "GO" uses, and served as a buffer for the Big Slough, the lake, and the projected residential uses to the west from the more intense commercial uses being allowed at the intersection. DP-245 Catamaran Cove C.U.P. is the C.U.P. immediately to the west. It includes the Big Slough and the lake, and is approved for multi-family development.

The applicant has requested all uses permitted in the "LC" district for Parcels 2 and 8 except the following exclusions: residential uses, public uses except daycare, pawnshops, secondhand stores, taverns, night clubs, drinking establishments or adult entertainment.

The applicant has proposed no changes to signage, setbacks, access control, landscaping, or architectural standards.

Ridge Centre is in a rapidly changing corridor. One recently approved development is DP-237 Ridgeport North C.U.P. to the east, which is under development with a medical office and is approved for a new medical facility for Via Christi. DP-250 Starwest C.U.P. was approved for the northwest corner of 37th and Ridge. Pending applications include DP-253 Kaylor C.U.P. just north of Starwest, and DP-252 Paragon C.U.P. just south of K-96. Additionally, single-family and multi-family housing is being developed closer to 29th Street North, and Catamaran Cove was approved for multi-family use immediately west of Ridge Centre.

With the volume of potential development along Ridge, floodplain issues have become a major concern. This is an area impacted by the floodway of the Big Slough. Currently, a master basin study is being prepared for the area along the Big Slough from 21st Street North to 45th Street North.

CASE HISTORY: DP-242 was platted as Hoskinson's Second Addition on April 11, 2000.

ADJACENT ZONING AND LAND USE ZON2000-00017 (PARCEL 2):

NORTH: "LC"	Vacant
SOUTH: "NR"	Vacant
EAST: "GO"	Medical office, vacant
WEST: "NR", "SF-20"	Ridge Centre Lake, vacant, private lake, residence

ADJACENT ZONING AND LAND USE ZON2000-00018 (PARCEL 8):

NORTH: "LC"	Vacant
SOUTH: "SF-20"	Ridge Centre Lake, vacant
EAST: "LC"	Vacant,
WEST: "SF-20"	Big Slough, private lake, residence

PUBLIC SERVICES: The property is located along two major arterial streets, 37th Street North and Ridge Road. Ridge was recently reconstructed to four-lane standards. 37th Street is still an unpaved county road. Traffic volumes along Ridge Road in 1997 were 7,717 ADTs (average daily traffic). This was projected to increase to 15,275 ADTs in the 2020 Transportation Plan, but this projection did not anticipate the volume of development occurring in the vicinity due to the combined effects of the development of the Via Christi site and the other commercial and residential development approved for the Ridge Road corridor. Traffic improvements were determined during the approval of the C.U.P.

Water and sewer services are not currently available, but the applicant has guaranteed these extensions as part of the platting process.

CONFORMANCE TO PLANS/POLICIES:

South of 37th Street North along Ridge Road, the "Wichita Land Use Guide" of the Comprehensive Plan shows commercial use at the intersection of Ridge and 37th, with a buffer of office development that is surrounded by residential use. North of 37th, commercial development is also shown along both sides of Ridge to 45th Street North.

"Office Locational Guidelines" include the following: (1) location adjacent to arterial streets, (2) local, service-oriented offices should be incorporated within or adjacent to neighborhood and community-scale commercial development, and (3)

low-density office can serve as transitional land use between residential uses and higher intensity uses (such as commercial).

"Commercial Locational Guidelines" include the following directives for neighborhood and community scale commercial uses: (1) location adjacent to arterial streets that provide needed ingress and egress to avoid traffic congestion, (2) have required site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential land uses, and (3) locate commercial uses in compact clusters or nodes versus extended strip developments.

RECOMMENDATION: Currently the two parcels requested for "LC" zoning are zoned "NR" Neighborhood Retail, limited to "GO" General Office uses, to serve as a buffer for the more intense commercial uses at the intersection of 37th and Ridge. This is the same pattern approved for the southeast corner of 37th and Ridge, DP-237, the proposed Via Christi site. The majority of the frontage on DP-237 is zoned "GO," and the parcels in the mid-mile section are zoned "NR." Only those parcels at the corner of 37th and Ridge are zoned "LC."

It is our understanding that the intended user for Parcel 2 is a veterinary clinic, which is allowed as a "Conditional Use" in "GO" so long as it is for small animals and has no outdoor runs. Approval of a "Conditional Use" for animal care, limited, can be accomplished by C.U.P. amendment. In this case, it would merely require provision of a site plan that meets site design standards and the conditions of Sec.III-D.6.c of the Unified Zoning Code.

The proposed use of Parcel 8 is a small strip center. This type of use is permitted in "NR" Neighborhood Retail so long as no single user is over 8,000 square feet in size and restaurants are limited to 2,000 square feet in size. Other than the 2,000 square feet limit for a restaurant, "NR" would permit the type of development proposed. As part of the C.U.P. amendment, this 2,000 square-foot limitation for a restaurant could be adjusted.

Staff feels that the requested uses of the parcels are appropriate so long as the scale of the developments maintain the desired buffer effect between the commercial activities of greater intensity allowed nearer the intersection and the residential uses to the west. This can be accomplished by approving the requested animal care, limited, as a permitted use and restricting Parcel 8 to small-scale types of uses. Based on these issues and information available to Staff prior to the public hearing, Staff recommends the request be APPROVED as follows:

- A. DENY THE ZONE CHANGE (ZON2000-00017) TO "LC" LIMITED COMMERCIAL BUT APPROVE the use of animal care, limited for Parcel 2.
- B. APPROVE THE ZONE CHANGE (ZON2000-00018) TO "LC" LIMITED COMMERCIAL for Parcel 8 but restrict the "LC" uses to only those uses permitted in "NR" zoning district except that restaurants greater than 2,000 square feet in gross floor area but not exceeding 8,000 square feet in gross floor area shall be permitted so long as they do not provide drive-up window service or in-vehicle service.
- C. APPROVE the amendment to the Community Unit Plan (DP-242), subject to the following conditions:
 1. Parcel No. 2:
Proposed Uses: Same as Parcel 1.

Animal care, limited, shall be permitted subject to the provisions of Article III, Sec. III-D.6.c.
 2. Parcel No. 8:
All permitted uses in the "NR" Neighborhood Retail District except correctional placement residences, limited; correctional placement residences, general; group home, limited, general and commercial; recycling collection stations; asphalt or concrete, limited; manufacturing, limited; mining or quarrying; oil or gas drilling; rock crushing; solid waste incinerator; and all industrial uses.

Restaurants greater than 2,000 square feet in gross floor area but not exceeding 8,000 square feet in gross floor area shall be permitted so long as they do not provide drive-up window service or in-vehicle service.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area is currently vacant but approved for commercial uses on the southeast and southwest, and northwest corner of 37th and Ridge Road.

For Parcel 2, the property across Ridge Road is zoned "GO" and being developed with medical offices. To the south of Parcel 2, the property is zoned "NR" restricted to "GO" uses. To the west, it is approved for "B" Multi-Family, subject to platting.

For Parcel 8, the property to the north is zoned "LC," but the property to the west and south is zoned "B" Multi-Family. It is anticipated that the property along 37th to the west of the multi-family area and the two lakes will be developed in low-density residential use.

2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with "GO" General Office uses as approved for Parcel 2 and Parcel 8.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: As recommended, the small scale commercial uses allowed by "NR" on Parcel 8 would buffer the more intense "LC" commercial development at the corner of 37th and Ridge to the north and east from the residential uses to the west. Allowing all "LC" uses, as requested by the applicant, would eliminate this buffer effect. Allowing animal care, limited, on Parcel 2 should not have any detrimental effects on nearby property so long as it complies with the conditions in Article III, Sec. III-D.6.c.
4. The length of time the subject property has remained vacant as zoned: The property has only been vacant two months since the zoning was final upon platting of the property.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The recommended "Conditional Use" for Parcel 2 conforms with the office designation of the Wichita Land Use Guide. The use of small-scale commercial activities with less than 8,000 square feet in size adheres to the commercial locational guideline of using site design features to minimize the impact of commercial activities on surrounding residential uses.
6. Impact of the proposed development on community facilities: As recommended, the proposed changes should have minimal impact on community facilities.

GOLTRY "This is a three-fold application, an application for an amendment to Ridge Centre CUP and for the rezoning of two properties that are zoned 'NR' Neighborhood Retail', but restricted to 'GO' office uses; to 'LC' Limited Commercial.

The Ridge Center CUP was approved a year ago, and at the time of the requested approval of Ridge Center of May of 1999, they requested 'LC' zoning on all nine parcels; however, at that time the County Commission approved 'NR' Neighborhood Retail restricted to 'GO' General Office use for four of the nine parcels. At that time they approved 'NR' for Parcel 8, which is one of the items requested for rezoning to 'LC', for Parcel 2, Parcel 9 and for Parcel 1; and the idea was that all four of those parcels would form a buffer between the more intense 'LC' Limited Commercial uses that would be at the corner of Ridge and 37th Street, the lake and then the residential, beginning with multi-family and extending to single-family as we travel on 37th Street. I should note that this is a confusing site plan because it is on its side, if you will. (Indicating) This is Ridge Road, this is 37th Street.

In this request, the applicant has requested all uses permitted in 'LC' except residential uses, public uses except daycare, pawnshops, secondhand stores, tavern, nightclubs, drinking establishments or adult entertainment. Ridge Center is a rapidly changing corridor, and as we have discussed in previous planning meetings, flood plain issues are a major issue along the Ridge Road corridor and particularly in the Big Slough area. They are looking at a master drain for that area.

I would point out that in the northeast corner of the Ridgeport North CUP, it is commercial use in the corner section, but the remaining portions of this CUP, DP-237, is zoned 'GO' General Office. Some of the ones in the parcels I showed earlier are zoned 'LC' but restricted to 'NR' uses, plus a few additional uses. In terms of conformances with plans and policies, we have pointed out that the office location guidelines were put in place to show that office locations should be adjacent to arterial streets, that local service oriented offices should be incorporated within or adjacent to neighborhood or community-scale commercial development and low-density office use conserve as a transitional use between residential use and higher density uses, such as residential. In terms of staff recommendation for this application, the intent of the zoning a year ago of the four parcels 'NR' Neighborhood Retail restricted to 'GO' General Office uses was to provide that buffer that would exist between the more intense commercial uses that would be concentrated on the corner of 37th and Ridge, as was done on the opposite corner at DP-237; then we would have a lesser intensity of uses and then we would see residential developing beyond that point.

I will say that the development pattern to the north is not as well defined. We do have Starwest, which shows a much larger 'LC' commercial corner, if you will, but the western portion of that site actually is drainage reserve. On the northeast corner of 37th and Ridge, we still have the old true commercial corner zoning of 600 x 600 square and the rest of that property has not been in for development, so it is not well defined.

We have looked at what the applicant has requested and in discussing with the applicant what we have found is that their intended uses at this point was for an animal care clinic for the parcel along Ridge Road and for a small strip commercial center along 37th Street. These are not high intensity commercial uses, so the recommendation was developed to give them the ability to develop those uses but to keep the scale of development to be lower intensity and allow for that buffer. So therefore, the recommendation was for ZON2000-00017 that the zone change to 'LC' Limited Commercial be denied but that the use of animal care limited be approved for Parcel 2.

For the other parcel on 37th Street, that the zone change be approved for 'LC' but this be limited to restrict to those 'LC' uses to only those uses permitted in the 'NR' Neighborhood Retail zoning district, except restaurants greater than 2000 square feet in gross area but not exceeding 8,000 square feet in gross floor area should be permitted so long as they do not provide drive-up window service or in-vehicle service. This is similar to the types of restrictions placed on the mid-mile 'LC' but restricted to 'NR' parcels in Ridge Port North, across Ridge Road to the east.

I did have a person who resides on 37th Street call this afternoon. She had just noticed the signs and called to express her concern with it and faxed in a letter, which I provided to you. I failed to note on the top of that letter, as I passed it around, that it belongs with this case, Agenda Item 8. I will stand for questions."

MARNELL "Are there any questions? If not we will hear from the applicant on this item."

KIM EDGINGTON "I am with Austin Miller, representing the applicant. I would like to just start; I guess and go down our laundry list of concerns that we have regarding staff comments. I apologize, but I am kind of in on the middle of this case. I did not do the original zoning work for this Ridge Centre CUP, but I am under the impression that the CUP was originally approved with the understanding that since there were no firm tenants for this space that we would come back and revisit this issue at a point where there were tenants lined up. That is the case now. We do have contract purchasers for both of these lots.

For Parcel 8, the purchase is contingent upon receiving the 'LC' zoning. The contract buyer has an intended strip center on this parcel, but the plan is not entirely set in stone and therefore I would like to have the flexibility to develop this with some 'LC' uses. We have what I believe to be a more than adequate buffer to the west of this property. There is 450 feet to the west of Parcel 8 before the Single-Family 20 zoning district. And also, along that same line, on Parcel 2, we feel that the remaining General Office use that is allowed on Parcel 1 is a more than adequate buffer to the south of this parcel. You will notice on the site plan that that is 609 feet. That is the length on Parcel 1, which is a suitable buffer between an 'LC' use on Parcel 2 and anything that would be to the south.

Currently, the property to the south of this is zoned Limited Industrial just past where the Slough comes out here. The property to the south of that is Limited Industrial. Parcel 2 has, as you can see on the Community Unit Plan, the ability to develop with a building of up to 14,000 square feet. We are all probably aware that a small animal clinic is not likely to need that much square footage and therefore we would like to maintain the availability to develop some additional tenants space on that parcel under the 'LC' zoning category.

Back to the letter that was faxed to you this afternoon. I think that the second part of that, we have addressed by placing the restrictions on uses within the 'LC'. We have restricted adult entertainment, drinking establishments, and as far as the impact on flooding, there is an ongoing study right now for drainage in that area. The types of uses that we are proposing on this are not going to be too dissimilar from what would be allowed currently. It would not make a drastic change in the use of those parcels.

Basically, we are not in agreement with staff comments as far as limiting those two parcels to Neighborhood Retail uses on Parcel 8 and the Conditional Use on Parcel 2. We still request the Limited Commercial zoning with the restrictions we have placed. I did want to clarify one comment that was made in the staff report. I believe on our initial amendment that we had submitted with some handwritten amendments, we did not propose any changes to signage setbacks access, etc., but you will notice on the CUP amendment that you have in front of you right now, we have requested that on Parcels 2 and 8, signage be per the Limited Commercial zoning district."

KROUT "Is that with the restrictions that are on the CUP on 20 feet and monument signs?"

EDGINGTON "Yes. Retaining those same restrictions. I would be glad to answer any questions."

WARREN "Kim, let me ask you, according to your CUP, and I am going to go through this, No. 1 would be 'GO'; No. 9 would be 'GO'. All other lots would be 'LC'?"

EDGINGTON "That is correct."

WARREN "Okay. According to your CUP restricts those 'LC' uses to the normal restrictions of taverns, adult theaters, etc.?"

EDGINGTON "Yes."

WARREN "And pawn shops, second-hand stores, taverns, night clubs, drinking establishments and adult entertainment. I think that was what was addressed in this letter of concern, wasn't it?"

EDGINGTON "Right. So we feel that those issues have been adequately addressed by our restrictions."

MARNELL "Are there any other questions of the speaker? Thank you. Is there anyone else here to speak in favor of this item? Is there anyone to speak in opposition of this item?"

JAN BRYANT "I live at 2748 Northshore in a Neighborhood Association commonly called Barefoot Bay, which is downstream on the Big Slough. I am neither for nor against this zoning proposal, but I wish to inform you of the last 48-hour happening. Tuesday evening at 10 o'clock, rain. We all know that. The Big Slough has done great. It empties right into the Big Ditch and that is what it is supposed to do.

The City of Wichita has granted building permits to residential homeowners and they have set the floodplain. Let me just tell you. Are you all familiar with the rainstorm that happened Tuesday? Three or four inches, let's say it was three. At Exploration Place they have the four little things for around the City so you can see how much, but it was in between three

and four inches, regardless. Our lake rose 12 inches from Tuesday to Wednesday. Today I got home at 1:00 o'clock in the afternoon and it was up another 12 inches. This was after, I would say, 36 to 48 hours of the rain.

Commissioner Hentzen brought up an interesting point. We are all thinking of surface drainage, but in the pictures here where this flat level...do you know how flat and level this land is around here? All of this water saturates into the ground. How far is it to the Equus Beds? I am saying that in the last 12 to 24 hours it came from the bottom up. Our pit is old and it is deep, over 35 to 40 feet deep. It wasn't raining then. I am just giving you this information because this area will be developed. There is no doubt about that. When were the pictures on the slides taken?"

GOLTRY "Two weeks ago."

BRYANT "And is there not water standing there?"

GOLTRY "Yes."

BRYANT "Now, when we put paved parking lots, roofs and drives there, are you going to put it in the Big Slough, and am I going to be raising 3 foot on the next three inch rain? I don't know. I am a housewife. I am merely here to tell you what has happened at my home. You are talking Barefoot Bay, Mirror Ridge, and the development down on 21st Street, Lake Ridge. There is a considerable investment that people have made.

The Big Slough seems to be the waterway, but Barefoot Bay is almost like a Teapot in that under 29th Street, there is at least a four-foot bridge, maybe six-foot bridge. Ridge Point was built on the Big Slough, he rerouted the Big Slough around and it still uses that bridge as drainage for that housing addition and then the outlet is two foot under a railroad right-of-way. Ridge Road at 21st Street where Reflection Ridge is has ponds on their golf course and it drains under Ridge Road in to Lexus Lake, which is part of the Big Slough. So you are draining part of the Cowskin River basin into the Big Slough. I see all of it from up at Highway 96 being drained into the Big Slough. I really think you need to take a look at it. That's all. Are there any questions?"

MARNELL "Are there any questions of the speaker?"

KROUT "I would just like to respond for you and maybe the Planning Commission to know that we had a place across the lake from this zoning case that you are looking at now. Normally, what we and the engineers have told the County Commission and the City Council was that it was a platting issue and this isn't the time to raise that issue.

If anyone has been following that case, Commissioner McGinn and when Chairman Winters expressed concern and held up that case, we had several meetings with the City and County Engineering staff and with some of the major land developers and their engineers and as a result, I don't think we have exactly put the pieces altogether yet, but there is a concern that has now been focused on the Big Slough drainage area. And the County Commission is intending to, in some way or another, take a closer look at the Big Slough in the same way that we are now taking a closer look at the Cowskin Creek to try to make sure that we can prevent future problems from occurring.

I think there is a new condition on that case that was approved that says that it can't be developed until a revised drainage plan is prepared for the whole basin. So I think that the concern that you have stated, I don't know if you have already addressed it to Commissioner McGinn or Chairman Winters, but someone is listening, and I think there is some attention that is being focused now on this drainage area."

BRYANT "Okay. I appreciate that. I just hope that we aren't getting the horse behind the cart. It seems like a drainage plan should be in force before development is allowed. Thank you."

MARNELL "Is there anyone else to be heard in opposition? Kim, do you have rebuttal?"

EDGINGTON "I just want to again emphasize the fact that we would like to revisit this now as a CUP amendment once we have seen that this area is rapidly developing commercially. We have Starwest CUP directly to the north of this that does allow Limited Commercial uses. We are seeing more and more along Ridge Road, and these are appropriate-type uses. I did fail to mention earlier that Don Arnold, Jr., the broker for this property is here, if you have any questions of him. I will close with that."

MARNELL "No questions? Okay, I will bring it back to the Commission for discussion."

WARREN "There is no way we could sit here and not be concerned about these drainage issues, and certainly I am. However, what I think what we are asked to look at, and as this lady stated, this is going to develop; so the question for us is what is the best use of the land and how should it be zoned? Based on that and based on having gone out and looked at this, and the way traffic is moving and the way growth is moving out there, I am going to make a motion.

MOTION: That the Metropolitan Area Planning Commission recommend to the governing body that the plat be approved as requested, using the CUP given us by the applicant as a guideline for the zoning, more specifically that Lots 1 and 9 be zoned 'GO' and all other lots in the plat be zoned 'LC', subject to the specific restrictions outlined in their CUP.

GOLTRY "I would like to make a technical note that right now, the two lots you said, Lots 1 and 9 to zone 'GO', are currently zoned 'NR' Neighborhood Retail, restricted to 'GO' uses. That would be down zoning."

WARREN "That is what it seems that they are asking for. If you would rather have Neighborhood Retail, I don't care."

EDGINGTON "I apologize. I misspoke earlier. Those are zoned Neighborhood Retail, but they are limited to General Office uses at this time."

WARREN "So you would rather have them be zoned Neighborhood Retail than General Office, or what are you asking for?"

EDGINGTON "We aren't asking for any changes on any lots besides Lot 2 and Lot 8."

WARREN "Just 2 and 8 is all you are asking for?"

EDGINGTON "Right."

KROUT "They will be back later for the rest of them."

WARREN "I don't know why you didn't come in for it all. Okay, so the only thing we are considering is Lots 2 and 8."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The area is currently vacant but approved for commercial uses on the southeast and southwest, and northwest corner of 37th and Ridge Road. For Parcel 2, the property across Ridge Road is zoned "GO" and being developed with medical offices. To the south of Parcel 2, the property is zoned "NR" restricted to "GO" uses. To the west, it is approved for "B" Multi-Family, subject to platting. For Parcel 8, the property to the north is zoned "LC," but the property to the west and south is zoned "B" Multi-Family. It is anticipated that the property along 37th to the west of the multi-family area and the two lakes will be developed in low-density residential use. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with "GO" General Office uses as approved for Parcel 2 and Parcel 8. Extent to which removal of the restrictions will detrimentally affect nearby property: As recommended, the small scale commercial uses allowed by "NR" on Parcel 8 would buffer the more intense "LC" commercial development at the corner of 37th and Ridge to the north and east from the residential uses to the west. Allowing all "LC" uses, as requested by the applicant, would eliminate this buffer effect. Allowing animal care, limited, on Parcel 2 should not have any detrimental effects on nearby property so long as it complies with the conditions in Article III, Sec. III-D.6.c. The length of time the subject property has remained vacant as zoned: The property has only been vacant two months since the zoning was final upon platting of the property. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The recommended "Conditional Use" for Parcel 2 conforms with the office designation of the Wichita Land Use Guide. The use of small-scale commercial activities with less than 8,000 square feet in size adheres to the commercial locational guideline of using site design features to minimize the impact of commercial activities on surrounding residential uses. Impact of the proposed development on community facilities: As recommended, the proposed changes should have minimal impact on community facilities.) I move that we recommend to the governing body that the request be approved, subject the following:

- A. Approve the zone change (ZON2000-00017) to "LC" Limited Commercial.
- B. Approve the zone change (ZON2000-00018) to "LC" Limited Commercial.
- C. Approve the amendment to the Community Unit Plan (DP-242), subject to the following conditions:
 1. General Provision 5.D shall be revised as follows:

Parcel No. 2 - As permitted by the Sign Code in the "LC" Zoning District.

Parcel No. 8 - Same as Parcel 2.
 2. Parcel Description:

Parcel No. 2

Proposed Uses:

All permitted uses in the "LC" Limited Commercial District except: residential uses; public uses, except daycare; and pawnshops, secondhand stores, taverns, night, clubs, drinking establishments, or adult entertainment.

Parcel No. 8

Proposed Uses:
Same as Parcel 3

WARREN moved, **MICHAELIS** seconded the motion.

MARNELL "We have a motion and a second. Is there any discussion?"

PLATT "I don't like the idea that has been suggested here that we approve a CUP with the idea that probably the proposal didn't have any relationship to what would be developed there and we understood that the applicant would be in following years to tell us that that was all wrong and that we should change it. That is not the purpose of the CUP.

A CUP is designed to lay out an area for development to relate to the surrounding property that makes sense. I think that is what we voted for when we approved it. I don't like the idea of coming in now saying okay we are going to start expanding on it when nothing has been built there. We are going to end up with the whole thing ultimately with the whole thing Limited Commercial, I would guess, if this is accepted. Or maybe full commercial or maybe Industrial."

KROUT "And then the other side of the street will come in and ask for the same thing."

PLATT "Yes, ask for the same thing. I certainly cannot, in any way, support the motion. I think it was a fairly good CUP to begin with, but obviously we are getting into some flooding problems there that perhaps we should have been more concerned with at the time. That is not an issue here, and I think CUPs should properly step down activity to buffer what will be residential areas and I don't like the idea of coming in and doing away with that concept even before development starts and changing it. So I am very much opposed to the motion."

OSBORNE-HOWES "I will vote against the motion, too. I agree with Mr. Platt. I guess I am less concerned about the zone change to Parcel 2, but I don't support the zone change on Parcel 8. You know, really, if we approve this, we will start seeing lots of requests from all of the other developments and I think it will change dramatically how Ridge Road is developing. I am definitely against it."

MICHAELIS "I don't know that I necessarily disagree with anything that you said, but by the same token, I think our purpose and the whole purpose of this is to look at things on a case-by-case basis, and as time goes by, and I am not exactly sure when this CUP was done, whether the property across the street was done at that time or not, but chances are they will come in and ask for a different zoning. The tough thing to do is any CUP is look down the road and see what is going to come and what is going to happen.

Obviously I think we would be remiss if we sat here and said that we didn't see that whole corridor developing pretty much commercial all along there. So I think, in fairness, and in the bigger picture, that we look at that based on those assumptions and not having the benefit of being able to look in that crystal ball and saying 'this is exactly what is going to happen five years from now', from what I say that I want now. That is just the nature of the industry."

JOHNSON "Marvin, it hasn't been too long ago that this was probably zoned Light Industrial, right?"

KROUT "Not this parcel. The parcel to the south is."

JOHNSON "But the parcels to the east of this and south of this were all Light Industrial."

KROUT "South and on the same side of the street."

JOHNSON "As well as on the other side of the street."

KROUT "Yes, on the southeast it was also industrial and was converted to Residential when the sandpits were finished. They are four-plex developments."

JOHNSON "So there has been a lot of changes in the area. It has been an industrial area, and now there are some very nice homes still built up against the Light Industrial on the other side. It has changed."

OSBORNE-HOWES "Just a last comment. I think that we should see ourselves here as planners and not realtors."

WARREN "Oh, that hit below the belt."

KROUT "I guess I would just like to remind the staff that when these CUPs on both sides of the street came in, the idea was that we knew development activity was going to be attracted to this Ridge Road corridor. But we were going to try to

guide it, if you will excuse the term, to develop in a way that is a little bit higher in quality than some of the commercial streets, like West Street that we have seen in the past. One of the ways you do it is to concentrate the retail commercial more intense uses in the corridor and we already have three corners zoned, and there will be a fourth corner zoned that will take all of the 'LC' uses, which includes fast food restaurants and auto repair shops and all of that that you could want. But that you would try to 'tail off' and have some change in character so that you don't have this continuous strip development from 29th Street all the way to 45th Street.

But case by case, inch by inch, what we are doing is allowing that issue of quality to slip, and it is a balance. The Planning Commission has its responsibility to try to be flexible to the marketplace, but what kind of an inheritance are you leaving to the children here in Wichita. I think we are leaving a mess."

WARREN "I guess I don't quite understand. When I read their original CUP, and I assume this is the original CUP, isn't it?"

MARNELL "This is what is requested."

WARREN "Oh, this is what is requested, okay."

KROUT "And what you also said when you approved this particular CUP was that we are not going to write a blanket 'LC' check, because we know we are ahead of the market. When people actually come in to actually do something, then we may make some tweaks here and there, but what we recommended to you was the tweak that is necessary here. And now, what they are asking for is the blank check that you denied before, but just go right ahead."

LOPEZ "I will not be voting in support of the motion. We approved these CUPs from the standpoint of down zoning from retail and from residential up through commercial. We basically made a public statement that that was how we were going to do it. I agree with Marvin's comments that we said we would look at tweaks, but now to entertain just flat out changing the CUP that we adopted from the standpoint of taking back what we publicly said we would do. That is not reflecting very good on us. There are other lots in here that are commercial, in 'LC'. Those are the lots that should have been looked at."

MOTION: That the question be called.

CARRAHER moved, **MICHAELIS** seconded the motion, and it carried unanimously (10-0).

VOTE ON THE MOTION: The motion carried with 6 votes in favor (Johnson, Michaelis, Warren, Marnell, Hentzen and Carraher), and 4 in opposition (Platt, Lopez, Osborne-Howes and Warner). Barfield, Garofalo and McKay were not present.

Other Matters

HENTZEN "Mr. Chair, there has been a lot of discussion about flooding, and about everything we have talked about here. If you will remember, Marvin Krout sent us a notice of all of the brown bag series. They meet here, I believe on Wednesdays at noon. I see a fellow listed here who is going to speak on the Cowskin Creek study, a Les Lampe. Then, later on, Mr. Mike Dealy is going to talk about the future of the Equus Beds.

I came to the first two, and I want to tell you, it is good information. I am just going to say that I hope that somebody can come to those. I think it broadens our understanding. I will tell you that this Equus Bed situation and this sand pit thing, over the Equus Bed, and even allowing a pig farm over the Equus Beds sounds to me like a stupid thing to do. But I need somebody to define whether it is a problem, or is it ever going to be a problem? Anyway, I just wanted to tell you that those are going on and they are pretty good."

KROUT "And we didn't pay you to say that. It was unsolicited."

HENTZEN "You've never paid me to say anything. In fact, you probably would pay me to shut up."

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9. **CON2000-00017** - Carp Brothers, LLC (c/o Wallace F. Carp/owner), Ritchie Corporation (c/o Steve Hatfield/Contract Purchaser) & PEC (c/o Gary Wiley, agent) request a Conditional Use to allow sand and gravel extraction on property described as:

We hereby certify the foregoing to be a true and correct list of the property owners of the hereinbefore described tracts and lots within a 1000-foot radius of:

A tract of land in the Northwest Quarter of Section 2, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, described as follows:

Government Lots 3 and 4, and the South Half of the Northwest Quarter of said Section 2; except the North 30 feet and the West 30 feet for road right-of-way and except commencing at the Northwest corner of said Northwest Quarter; thence South along the West line of said Northwest Quarter 1168 feet to the point of beginning; thence continuing South along the West line of said Northwest Quarter 931.9 feet; thence East 245.7 feet; thence North 531.9 feet; thence East 384.3 feet; thence North 400 feet; thence West 630 feet to the point of beginning. Generally located on the southeast corner of 29th Street North and Hoover.

BARRY CARROLL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting a Conditional Use to allow for a sand and gravel extraction operation on an unplatted 150-acre tract of land. This property is zoned "SF-6" Single-Family Residential and "LC" Limited Commercial.

The application area is located at the southeast corner of 29th Street North and Hoover. Currently, access to the site is from Hoover and is home to a hog operation. The applicant's agent indicates that the overburden will be removed and hauled to Brooks landfill for daily or final cover. The applicant's agent also indicates that 29th Street is the logical location for trucks to enter the site during overburden removal. The sand from the excavation is proposed to be pumped to the Ritchie Corporation plant site (CU-278) located on the east side of West Street approximately ½ mile north of 29th Street North. It will be from the West Street site that the sand and gravel will be distributed. An operations site plan has been submitted. The excavation is to be completed within 10 years from the start of the actual excavation.

Once the excavation is completed, the applicant proposes to develop the property with residential uses. The applicant has submitted a redevelopment site plan for review. This plan shows 79 lots surrounding a 95-acre lake, with a 50-foot collector road looping around the development with two connections onto 29th Street North and two connections to Hoover. Another connection is proposed in the southeast corner of the site to permit future access to the east. The plan assumes that public water and sewer service will be extended to this site in the future. Both plans show a 40-foot Phillips pipeline easement located in the southeast corner of the application area.

A mixture of agriculture and extractive uses characterizes the general vicinity. There are five other extraction sites within one mile on the subject property. There is a residential area that is zoned "LC" and "SF-6." Further to the north is a private airport. The property south is residential and zoned "SF-6;" to the east is a lime sludge deposit area and zoned "SF-20," to the west is a residential area (Barefoot Bay 2nd Addition) which is zoned "LC" and "SF-6." No portion of the subject property is located within the FEMA floodplain. Also, the most recent information pertaining to wetlands from the Sedgwick County Soil Conservation District and the Soil Survey of Sedgwick County indicates that the site is not associated with wetlands.

Staff is convinced that the redevelopment plan could be redesigned to create a more livable subdivision, and leave more land area to provide a permanent tax base with more lots to help pay for the infrastructure being planned for this area. Creation of an undulating shoreline with "fingers" or a peninsula would be a more desirable design than the one proposed. Bay Foot Bay, Spinnaker Cove or The Moorings are examples of subdivisions built on sandpits which utilize a more creative design which has left a more desirable development pattern than the one proposed.

CASE HISTORY: None.

ADJACENT ZONING AND LAND USE:

NORTH: "LC" & "SF-20"	Residence, airport and agricultural uses
EAST: "SF-20"	City of Wichita lime sludge storage site
SOUTH: "SF-20"	Large-lot residences
WEST: "LC" & "SF-6"	Residential subdivision

PUBLIC SERVICES: Municipal water and sewer services are not necessary to serve the proposed use. The property has access to Hoover Street, a two-lane paved section-line arterial; traffic volumes are not rated. Twenty-ninth Street is a sand and gravel street that is scheduled to be improved to four lanes in 2008. There are no scheduled road improvements to Hoover at this time. This area is a part of the Northwest Sewer Master Plan Study that is underway.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this property as "agricultural/low density residential uses." This request is in conformance with the land use objective of the plan by placing industrial uses in rural areas only when it is agriculturally oriented, dependent upon a natural resource, or as part of an appropriate expansion of an existing industrial area.

RECOMMENDATION: Staff would like to point out that the redevelopment plan that was submitted by the applicant showing 79 lots surrounding a 95-acre lake is perhaps not the best redevelopment scheme. A revised site plan employing an undulating shoreline would provide a better development pattern. Lake-oriented developments like this (Barefoot Bay, Spinnaker Cove or The Moorings) have been successful, due in part to designs which created a final land form that created a more interesting development patterns than is proposed with this application. It is recommended that a revised redevelopment site plan be submitted which depicts a curvilinear shoreline or has peninsulas or similar land features, and reduces the maximum size of the lake by at least 15 to 20 acres.

Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to the following conditions:

1. The extraction of sand on this site shall proceed in accordance with the revised operational plan as approved by the MAPC. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan.
2. In order to assist in the enforcement of the operational plan for this extraction use, the applicant shall have a copy of the approved operational plan posted in the sand extraction office.
3. Adjacent to the perimeter of the application area, a minimum 60-inch high fence shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the operational plan. Said fence shall be placed on steel posts that are not less than seven (7) feet tall. The posts shall not be set more than 16 feet apart. The fence shall be a minimum height of 60 inches and shall be of the following types of construction:
 - a) A 48-inch high or higher chain link fence with three (3) or more strands of barbed wire; or
 - b) A 48-inch high or higher solid metal or solid masonry fence with three (3) or more strands of barbed wire; or
 - c) A 48-inch or higher wood fence which may have cracks or openings not in excess of 5% of the area or such fence, with three (3) or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of four (4) inches apart and placed at the top of the fence and gate at an angle not to exceed 160 degrees facing away from the extraction.
4. The earth and sand shall be extracted to at least a minimum of six (6) feet below the normal water table, as determined by the Wichita-Sedgwick County Health Department.
5. To provide for bank stabilization for safety of future uses, the side slope of the extraction shall be no steeper than five (5) horizontal to one (1) vertical.
6. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
7. All the area included within the fence sand extraction operation shall be graded in accordance with a plan submitted to, and approved by, the Sedgwick County Bureau of Public Services.
8. The owner of the property shall be responsible for minimizing blowing dust from the site.
9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel, prior to the commencement of any sand extraction operation, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the application area.
10. The applicant shall submit a covenant satisfactory in form to the County Counselor and Sedgwick County Department of Public Services, prior to the commencement of any sand extraction operation, which authorizes the use of the extraction area as a detention storage facility for public drainage purposes.
11. The property shall be platted prior to the issuance of any zoning or building permits, except that necessary for the sand extraction operation.
12. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the county Zoning Resolution and amendments thereto.
13. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses, which will permit the establishment of sod cover to help, prevent erosion.
14. To minimize blowing soil in this area, overburden shall not be removed more than one year in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. The revised site plan shall divide the site into at least two areas indicating the sequence the areas are to be worked.
15. The storage of equipment or stockpiling of sand is not permitted closer than 100 feet to any public right-of-way or closer than 50 feet to any property line.
16. Nothing in the approval of this request shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the sand extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand, sand pumping and related equipment shall be removed from the subject site.

17. The approval of the Conditional Use is for a period not to exceed 10 years from the date of approval by the MAPC or the Board of County Commissioners [excavation will start within a period not to exceed a period of three years and will be completed within 10 years from the beginning of excavation] and subject operation is to cease after that period of time with all equipment and materials associated with the operation removed from the premises.
18. Hours of operation for the removal of overburden shall be limited from 6 a.m. to sunset. The same hours of operation shall apply if sand removal is conducted with use of non-electrical driven equipment. If sand is removed with the use of an electrical pump, sand extraction may operate 24 hours a day.
19. All on-site water and sewage facilities shall be approved by and constructed to the standards of the Wichita-Sedgwick County Health Department.
20. Any water wells needed to operate the facility must comply with the Water Well Construction Standards contained in Article 30 of the Kansas Department of Health and Environmental rules and regulations.
21. The applicant shall make the site available to the Wichita-Sedgwick County Health Department for the installation and management of groundwater monitoring wells.
22. The Wichita-Sedgwick County Health Department must approve any on-site storage of fuels or chemicals.
23. A drainage plan shall be submitted to and approved by the Sedgwick County Bureau of Public Works prior to starting the sand and gravel extraction. All of the area included within the fenced sand extraction operation shall be graded in accordance with the approved drainage plan.
24. The applicant shall obtain and maintain all applicable local, state and federal permits necessary for the sand and gravel extraction operation.
25. The applicant shall dedicate by separate instrument right-of-way for Hoover Street and 29th Street North pursuant to Article 7-201(H) of the Wichita-Sedgwick County Subdivision Regulations.
26. Any violation of the conditions approved, as a part of this request, shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The general vicinity is characterized by a mixture of agricultural, airport, sand extraction and suburban single-family residential uses on property zoned "SF-6" Single-Family Residential, "SF-20", Single-Family and "LC" Limited Commercial. There are five extraction sites and a lime sludge storage facility within one mile of the subject property.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: The establishment of this use would not pose a new threat to this area of the county, which is characterized by several sand extraction sites that are in operation and several closed sand extraction sites. Furthermore, the conditions of approval included in this staff report are designed to mitigate any adverse impact this use may have on surrounding properties.
3. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: This request is in conformance with the land use objective of the plan by placing industrial uses in rural areas only when it is agriculturally-oriented, dependent upon a nature resource, or as part of an appropriate expansion of an existing industrial area.
4. Impact of the proposed development on community facilities: Municipal water and sewer services are not necessary for the proposed use. The proposed use should have minimal impact upon Hoover Road or 29th Street since the sand is to be pumped to the West Street plant, minimizing the number of trips generated by this use.

CARROLL "This request is for a Conditional Use to allow sand and gravel extraction on property currently zoned 'SF-6' single-family and 'LC' Limited Commercial. It is roughly 150 acres located at the southeast corner of 29th Street North and Hoover. The applicant and agent are here to respond to questions.

There is currently a hog operation on this land. The sand extraction is proposed to be pumped to the Ritchie Corporation plant, which is located on the east side of West Street, approximately half a mile north of 29th Street North. Once the excavation is completed, the applicant proposes to develop the property with residential uses. They have submitted a redevelopment plan that you have been provided.

Currently there is a mixed use of agriculture and other sand pits within the general area. Twenty-ninth Street is a sand street and is scheduled to be improved to four lanes in 2008. There are no scheduled improvements to Hoover at this time. The Comprehensive Plan identifies this area as agriculture, low-density and residential uses. This request is in

conformance with the Land Use objective by placing industrial uses in rural areas only when it is agriculturally oriented or dependent upon a natural resource such as sand. Staff is recommending approval of this case with some exception. We would like to point out that the redevelopment plan that was submitted shows 79 lots surrounding a circle, a 95-acre lake that is probably maybe not the best redevelopment scheme. We would like to see something that has more fingers, if you will, or peninsulas that would be more appropriate for development. It is therefore recommended that a revised development site plan may be submitted that reduces the size of the lake by 15 to 20 acres. I suspect that the applicant will address this issue. We have submitted 26 recommendations and will respond to any questions that you might have."

OSBORNE-HOWES "Just a quick question on a case we had earlier. I am trying to remember, it had to do with the drainage easement as opposed to a drainage plan."

CARROLL "Right. I am going to defer to Mr. Wiley on that. He has addressed this issue in the past successfully with a Restrictive Covenant."

OSBORNE-HOWES "Was that left out on purpose?"

CARROLL "It isn't left out. It is in Item No. 10."

PLATT "I want to go back to the comment on looking for a site plan that would show a more irregular shore line. I think I agree with staff that from a strictly design standpoint that that sort of development is much more aesthetic. But I am wondering if when we do that we aren't designing something for upper income level people and if the proposed plan is not something that might be available for people with lower incomes to live around the lake. Have you balanced that concept in your thinking?"

CARROLL "No, I haven't."

MICHAELIS "Barry, looking at these lots, I am just guessing that they are in the 9,000 to 10,000 square foot range, and on a previous case, you guys recommended one acre lots. Is there a reason for your difference of thinking on this?"

KROUT "This is an area that will shortly have city services, and that is why the developer was showing urban sized lots in this area. We don't have any plans, at least for the next 20 or 30 years to be north of 45th Street. You could further subdivide one-acre lots up on 53rd Street, but in this area, we expect to see water and sewer shortly."

MARNELL "Are there any further questions? We will hear from the applicant, please."

GARY WILEY "I am here on behalf of the contract purchasers, Ritchie Development Corporation. Susan, you had a question about drainage. What we have done in Item No.10 is something we have done in the past and that is to provide a covenant for temporary detention of storm water run-off. This has been acceptable to the County. We still do a drainage and grading plan to be approved by Mr. Weber in Public Works under Item No. 23. So, it is all covered in our comments."

Basically, we are in agreement with really all of the items of recommendation for approval, 1 through 26. The only thing we really have a problem with is the redesign of the redevelopment plan. Not only what Mr. Platt has indicated, we are showing some 90 x 150 foot lots on this development, but it makes the pumping so much easier to pump in a large body like this, rather than pumping around peninsulas.

The lake across the street at Barefoot is basically one big lake. There is one point that is there on the far west that was where the pump site was. This won't have a plant site. This plan is a mile away. It will all be pumped by an electric dredge back some mile away, over on West Street, so we don't have a plant site here. All we will have is a dredge, plus the larger lake. The 95-acre lake opens up for much better water recreational facilities than peninsulas. We have shown 79 lots here. There is also about 10 acres left that the Carps, the owners of the property that they are keeping. There are three houses on the site today and they are saving about another 400 x 600, about 4 acres that could, in fact, happen for development in the future for some additional residential. That is the exception area that you see on the far west side. So we would really like to keep the redevelopment plan as shown. It means a million and a half tons of sand to pump it like we have shown it versus giving up some 15 to 20 acres for redevelopment.

So that is really the only major item that we have a problem with. We would like clarification on Item No. 17. There again, this concern goes to the 10 year time period. The ten years will work; we would just like for you to approve it subject to what is shown in parenthesis, for a period not to exceed 10 years from the beginning of excavation. We are anticipating that it may take somewhere in the neighborhood of three years to start, so we would like it ten years from the point of construction. Other than that, I have nothing else. Mr. Hatfield is here with Ritchie Sand if you have any questions of either of us or Steve. Steve, would you like to speak?"

HATFIELD (From the audience) "If there are any questions, I will be happy to answer them."

LOPEZ "Gary, in the area that you mentioned as an exception area. Is that the same ownership?"

WILEY "Yes, it is. That is the Carps; Carp Brothers, LLC. There are three residential home sites there now and they are keeping the large area up to the north of 400 x 600 for future development."

OSBORNE-HOWES "On No. 17, I think when we were hearing that earlier case, Mr. Krout mentioned that if we do this, not to exceed 10 years from the beginning of excavation and that we ought to put a time limit for excavation of this."

WILEY "That is what I am saying. We are looking at a period of 3 to 5 years before we start."

OSBORNE-HOWES "You were saying three years. I just thought about saying not to exceed three years."

WILEY "Yeah, thirteen years total."

OSBORNE-HOWES "Not saying 13 years, but 'not to exceed three years prior.'"

WILEY "Three years prior to starting. That is fine."

OSBORNE-HOWES "Maybe a little rewording. Thank you."

MICHAELIS "I would just like to make a comment. My comment is not intended to do anything other than get back to what we all sit here and say we should do is to be good planners, but we have looked at two cases today of essentially the same thing, but we are treating them differently. I guess I have a hard time understanding that. On one we say 5 years, another we say 10 years; one we say to give us an easement, the other we say don't give us an easement. I don't know, maybe this is directed to you, Marvin. I think the staff comments on these should be a little more in alignment than what they are."

KROUT "Well, we are trying to recognize that the size of the lake is different and that is part of the reason for the difference in the recommended time. I think that there is a difference in terms of whether or not there is going to be urban services available in the next 20 or 30 years to one area versus another. I think that in both of these cases we are saying that we think it is important to try to retain a fair amount of land remaining for development and I guess you can decide what is a fair amount. In the other case, there was practically nothing to leave to any other lots. In this case, they are providing a row of lots around."

But again, if you think about Hoover and 29th Street, that mile section of land is going to be somewhere close to the geographic center of the City of Wichita, maybe someday. If we take that whole area and replicate this pattern of putting 90 acre lakes and baby lots on a quarter section, you have a population of less than 1,000 people in a mile section that is developed that way, and that is about one-fifth of the density that we have in a typical mile section of Wichita.

Going back to the Comprehensive Plan, which talks about compact urban growth, I think this becomes a real waste of land to be taking land that is going to be in the heart of the urban area and developing it at very, very low densities in terms of the services that we are going to have to provide to support those areas over time."

MICHAELIS "Well, I guess my point is more that if we reference back to the previous case, when we started talking about CUPs, and that we should look at it on a case-by-case basis, we said that we shouldn't look at it on a case-by-case, but here you are saying that we should look at it on a case-by-case. Sometime we need to get some kind of continuity."

MARNELL "Well, Commissioner, we didn't take final action on that other one."

MICHAELIS "I am not talking about the other sand extraction."

KROUT "I realize that you are talking about the CUP."

MICHAELIS "Well, really, I was talking about the first sand pit compared to this sand pit, and the different requirements. The thing you just stated was that we needed to look at this on a case-by-case basis because it is different. That is the comment I made on the previous zoning change request that we need to look at it on a case-by-case basis, and we said no, we shouldn't do that. We should make a plan now and stick to it forever. That is where I am having a little difficulty."

KROUT "Well, staff, on the last case, I won't argue the last case on this case, but on the last case, we weren't arguing that we could stick to a plan forever. Previously, the Planning Commission said that we should look at individual uses when they come in on a case-by-case basis, so I think we were being consistent about being case-by-case. "

MICHAELIS "I am not saying so much staff as ourselves."

WARREN "I surely don't want to 'muddy up' the water on this, Mr. Chair, but it just came to my mind that what Marvin is saying is right. If you want to preserve prime farmland, there is only one way to do it and that is through density. If you have density, you preserve land by default. That is just the way you do it. This is not very good preservation of land through density. Is there a possibility through eminent domain that once this thing is done that this could become public recreation?"

WILEY "I am sure it will be for sale once it is completed."

WARREN "Do you mean the water itself?"

WILEY "Sure. Ritchie Corporation isn't a developer of land."

WARREN "So they will be wanting to sell the lake?"

WILEY "Sure."

WARREN "It would seem to me like it would be a good idea for the City to say 'let's make a deal', or the County, or somebody. We need 95 acres of available land for boating, fishing and recreation. I don't say they ought to give it, nor do we have any right to ask them to, but this would be a good time to negotiate for more people to use this than just the 79 lots."

KROUT "Well, maybe we should let them go ahead and then dig out most of it so it won't have as much residential value later and maybe we can afford it."

WILEY "And you can only find sand in certain locations."

HENTZEN "I think this goes to the suggestion that George Platt made about putting islands out there."

WILEY "George was against that."

HENTZEN "Oh, I thought he...then who was it that said that? Well, anyway, what I wanted to ask was if you do that in an area where it is total sand all the way down, you would have to have a pretty wide area to try to build anything on it because that sand really isn't a good base."

WILEY "No. You would have to do some backfill in there with some rock."

HENTZEN "Yeah. Well, all I am saying is that I don't think that is a decent idea."

WILEY "You would get a lot of wash."

WARREN "They spent tons of money over in the Moorings for that 'sea wall'."

WILEY "We think we have a plan that is very viable."

MARNELL "Are there any further questions? Is there anyone else to be heard in favor of this item?"

VICTOR EISENRING "I live at 4620 West 21st Street. They are making a statement that they are about of land to fill Brook's Landfill. I wish they would get up here and raise their hand and swear to that. It's too bad. They have 360 acres right across from their sand plant office that they are stripping right now. And we go back down the road here on permit No. CU-441. It was issued in 1997. They went in there and took about 35 acres of topsoil, which they were to leave the virgin soil and take a gather. There is no boat in there and they promised to have a dredge in there within a year. Well, here we are in 2000 and we still have a little boat in there swarming around, making a hole but not pumping sand to the sand plant like they agreed to.

So I don't think that they ought to have this Conditional Use permit. They have enough land up there to do this. This is mostly hogging up the land and furthermore, I don't believe you could build on land because that hog farm has been there for 55 years, and there is a lot of waste on it. Nobody has run tests on it. So I think somebody had better be doing something. I would like to have this permit checked, what I am telling you about. This says 'if they do not perform the permit could be void immediately'. Now I want to know how long it is going to take to get it void?

It tells you right here; you guys wrote those specs on it, and they are violating those specs. I don't know if Mr. Wiley knew anything about this, or had thought about it, but there are your papers on the laws. So I would like to have an answer about the permit. Are you going to cancel it or not? If not, I will have to go further."

MARNELL "Sir, what we are seeking here is comments on this particular Conditional Use permit. If you have Code violations or violations of prior permits, this would not be the forum for that."

EISENRING "The number is CU-441. It was issued to them in 1997 to do all of this that I am explaining to you. They went in there and took so many acres of topsoil and they were supposed to leave the topsoil, according to this permit and take the other and they haven't done anything but a little boat in there swimming around. They are not dredging sand. So that is the reason I am here."

MARNELL "Thank you, sir. Is there anyone else to speak on this item?"

TOM SANDERS "Our Corporation owns the full half-mile to the north along this property on 29th Street all the way to 37th Street. First of all, I agree with George and Marvin that I think the amount of sand should be limited. More ground left around that lake. The lots that they show right now, or the setback that they are showing from that property line is 250 feet, they are claiming. They have a 60-foot road in there, which is a requirement of the City. That knocks that down to about 190 feet between there and the lake. The lake itself, because we are talking about a lake not 30 feet or 45 feet, but 60 feet deep in there. Just the sloughing off of the ground is going to reduce it another, you name how many feet it is going to do in order to get a slope back from that lake. So your actual building size is probably reduced at least, and I am

going to be real conservative, another 30 feet. You can't build any closer than that to that water. So, I think they ought to set back further. I don't object to the shape of it, and I am not opposed to a sandpit. I just think it needs to be thought out a little deeper, maybe.

Secondly, I can tell you, for instance of the sloughing off. Steve can, too. They have a Conditional Use permit along my half-mile section line going to the north on 29th Street and there they pump from property line to property line with a minimum setback of 50 feet. About two weeks ago, I went to Steve and told him that we were within about 30 inches of eroding onto our property. They did repair it, but that is just an example of what can happen. And it wasn't in just one location; it was in several locations along there. Now, Steve told me this morning that they set a bunch of flags down through there, and I will be darned if I was going to track down through there and check the dimensions, but when I went down through there with a tape measure and another gentleman, we measured to the fence line in many places, 20 feet. They are supposed to be 50-foot back. Now, again, this is erosion taking place.

I've got one other right around here that I want to talk about, too. That property to the north has a Conditional Use permit for an airport and it has been an airport since 1951, long before the Carps were there, or Barefoot Bay was there. I can appreciate about flooding because Hoover Street never used to flood, but it does now.

There is such a thing as air rights running across there. If they build houses at the end of my runway, which is will be within 600 feet of this road, the people that build underneath that final approach aren't going to be too happy. I think you folks would know that from what has happened out at Jabara. You allowed houses to be built on the south end of Jabara and you have had all kinds of complaints out there. This airport isn't going to go away as long as I am alive, and I hope to live another few years.

The other thing. Who checks to make sure that their setbacks are 50 foot? I have yet to find anybody to take responsibility in the County or the City."

MARNELL "Mr. Sanders, do you need additional time?"

SANDERS "Yes, I do. I will try to cut it real short. Two minutes."

MOTION: That the speaker's time be extended for two minutes.

VOTE ON THE MOTION: The motion carried unanimously.

SANDERS "I will try to move fast. Now, I am also planning a little development over there. I don't want a lake that is from border to border. I only want about 20 acres, and I am having a heck of a time getting water rights. As Steve told me this morning, he can come over there any time because they have the right to pump my property. He told me that this morning. Now, I never authorized anybody to have our water rights. We have been there 50 years. By the way, this isn't in the Equus Beds, it's in the Arkansas Valley, so we are not involved with the Equus Beds.

Like I said, I don't object to it, but I think it should be controlled. I think no houses should be allowed underneath our flight way because there could be problems. That's it."

MARNELL "Are there any questions of the speaker? Thank you, sir."

SANDERS "Can I add one more thing about water rights I just thought of? I will be real quick."

MARNELL "You have a few seconds left, go ahead."

SANDERS "The water rights in this area out here within a two mile radius of that airport, 82% of them are owned by Ritchie Brothers. Eighty-two per cent. Here it is: another 10% is owned by the City and the County. That leaves, in a two-mile radius, only 8% for everybody else. That isn't right."

MARNELL "Thank you. Is there anyone else to be heard on this item?"

JAN BRYANT "Here I am again, Mrs. Barefoot Bay, Jan Bryant. I live at 2748 Northshore Court, Wichita, Kansas. I am neither for nor against this development. One thing I want to draw to your attention is the drainage and also the roadways. If you are going to put 100 homes in here, are you going to develop Hoover? If so, would you put a storm sewer in and maybe it will help alleviate the Big Slough, to which Barefoot Bay empties. Can I get the aerial back up here?

Okay. (Indicating) This is Barefoot Bay. This is a man-made channel. This is the area that is proposed for development. This floods right here. It floods every time. The people to the south of Barefoot Bay, this is in the County, it is a poor area, but there is Hoover and there is a railroad that runs right here. It would be a perfect way to get to the Big Ditch if you would get some federal funds and put in a storm sewer. Do some planning. Are you going to let the development happen, flood and then come back ten years later and help people out? You know. The Cowskin is just neon lights for everybody, and I can see it all happening here at the Big Slough.

Ritchie Brothers are very good neighbors. I think they would be good ones again. One thing, too, about this sandpit is that it is electric. You don't have the trucks, you don't have the dirt, the sand and noise. All of that. And we do enjoy

seeing people from the airport do their 'touch and gos' and whirl around. That is great. That is the area. Thank you. Does anyone have any questions of me, as a homeowner?"

MARNELL "Guess not. Is there anyone else present to speak on this item? Is there any rebuttal?"

STEVE HATFIELD "I am General Manager of Ritchie Sand. I have worked for the Ritchies now for 32 years. I have been involved with their operations for some time. There are several things that have been said, and if I were to address the drainage issue; in the first place, I am not sure that there is anything we can do on that property that is going to do anything for drainage, so I am not sure how we help or hurt that in any fashion.

The Big Slough does run through that other property. It does not run through this property. There is no water that comes onto this property that we know of. No water that goes off of this property. We do disagree with, and we have had these discussions with Marvin before, but on the previous Conditional Use permit, we were required to put the easement in place. The only issue we take with that is, having worked with Mike Dealy substantially, I understand his concern about contamination. One of the questions asked earlier though, was are there any cases of contamination. So far, the answer is no. But the County requires that they be able to drain their ditches into our lake. We only ask that they be liable. They have refused to accept that liability. So we do oppose that, but we will do it in order to get our Conditional Use permit.

Some of the other things that have been said, first of all, we do not pump 60 foot deep, it is not available in our area. It is more 35 to 45 foot. On the erosion of the land, we have basically tried to comply with all of the setbacks that have been given to us as far as the limits of excavation. The limit of excavation, though, if the water sits and works on that will begin to take some of the higher ground and it would appear that you have gone beyond your limit of excavation, but it is not there. That is what I did with Tom, to try to put some stakes in so that they could see that.

The property they allude to was piece of property that we pumped border to border and I would say we will probably never do that again. We feel that there does need to be much room for development when we are done. I understand that those Conditional Use permits were in place back in the late 60s and early 70s. It was a little different effort because we were way out in the country at that time.

The water rights issue is one that is almost a little embarrassing to me. We are required to give a dredging permit in order for us to go in and create these lakes. The lakes are necessary."

MARNELL "Your time has expired. Do you need additional time?"

HATFIELD "If you would like some explanation on some of these items, yes. Probably another couple of minutes."

MOTION: That the speaker's time be extended for two minutes.

HENTZEN moved, **WARNER** seconded the motion, and it carried unanimously.

HATFIELD "The water rights issue is one that is a particular concern to all of us in the sand business. We were discovered by water law about ten years ago. They have become concerned that there is more evaporation off of the lakes than there is water going back in and therefore, we have to have a term permit, which is the dredging permit, to dredge. That does not give us a water right. It is an interesting glitch in the law, and I am not about to begin to try to explain it to you unless you want to spend a lot more time here today, and I know you don't want to do that.

We do have, because we own all but the 220 acres in the section that the airport is located in, when we applied for it, we were given the permit that it did include the boundaries of their property. We do have a term permit that will allow us to dredge on the airport property only if the owner asks us to. He also can apply for a dredging permit and I advised Tom of that.

We also want to again state that reserves are hard to come by, particularly in this area and particularly with the investment we have in the plant over on West Street. That 15 to 20 acres that has been suggested that we leave represents 1 million to 1-1/2 million tons of aggregates at a time when it is harder and harder to find those. We again would like to come back and request that we be allowed this extraction. We are not buying it for development, we are buying it for the sand reserves, but we certainly want to leave a nice development when we are done. Do you have any other questions for me as the Manager of Ritchie Sand?

Oh, I would state also that one of the things we did real early on, as soon as I had access to all of the neighbors that had notification on this, the 1,000 foot, was to send out an information letter to those homeowners. We also had a meeting on June 8 at the 4-H building. We had about a dozen people show up. It was very positive; we enjoyed it. I think staff will comment that it was very well received. There was no opposition at that time."

MARNELL "Your time has expired. Are there any questions of the speaker? Thank you. We will bring this back to the Commission now."

OSBORNE-HOWES "I guess I just want to make sure that, in interest of fairness that perhaps some way, over time, we can clear up some of these loopholes or unevenness when we have applications for sand extraction. They talked about Item Nos. 10 and 23 basically covering the same requirements that we asked of that other sandpit that came to us earlier.

On the earlier request for a sandpit that we deferred, they took issue with some of the requirements that staff had asked for and said that you didn't ask for those requirements in this case. So now I am looking at this one and No. 23 deals with the drainage plan and No. 10 deals with the drainage easement or at least Mr. Wiley said that it was different language, but that it covered the same thing."

CARROLL "From my limited knowledge, it is."

KROUT "It is different, but it gives the public some rights of drainage in that area, which normally you would call an easement right, but I think that is what I was referring to before when I was talking about easements."

OSBORNE-HOWES "Okay, thank you."

WARREN "I would like to ask a question of the applicant. I don't know if we should be concerned, and I am sure you have looked at this, Gary, but there is going to be erosion out there. I have a lake, and predominately my west and north shore gets beat up pretty bad with a continuous south wind. I am concerned about the 250 foot. Is that going to be a terrible deterrent if that went up to 300 foot, particularly in those areas that are going to be most subject to erosion?"

WILEY "Another 50 foot is a lot of acreage when you go around a mile."

WARREN "I know it is, but..."

WILEY "That 250 foot is from the new property line, by the way. We are dedicating from 30 feet out to 50 feet and then the major intersection. So we are already giving up land, and with the 250 feet, if we use 50 feet, roughly, for an access road, a parallel road, as we have shown on the development plan, you still end up with lots somewhere between 150 and 175 foot deep."

WARREN "How much room does it take to get that 5 to 1 slope?"

WILEY "Oh, what we have shown is the top of the bank at 250. So the 5 to 1, it is 7 foot roughly, to water, so you are talking 35 feet."

WARREN "So it takes 35 foot to get your slope back up to grade?"

WILEY "Yeah, and we are starting at top of bank, 250 feet away from the property line. That 250 is the top of slope."

WARREN "So you would have, then, from there on down to get your 5 to 1 slope, or is that additional?"

WILEY "In addition, yes."

WARREN "You wouldn't take that out of the 250?"

WILEY "No, it doesn't come out of the 250."

WARREN "And the 250 is top of slope."

WILEY "It is. Top of bank or grade."

WARREN "Then your slope down to the lake would be in addition to that."

WILEY "Yep."

WARREN "Okay."

MARNELL "Are there any further comments or questions?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The general vicinity is characterized by a mixture of agricultural, airport, sand extraction and suburban single-family residential uses on property zoned "SF-6" Single-Family Residential, "SF-20", Single-Family and "LC" Limited Commercial. There are five extraction sites and a lime sludge storage facility within one mile of the subject property. Extent to which removal of the restrictions will detrimentally affect nearby property. The establishment of this use would not pose a new threat to this area of the county, which is characterized by several sand extraction sites that are in operation and several closed sand extraction sites. Furthermore, the conditions of approval included in this staff report are designed to mitigate any adverse impact this use may have on surrounding properties. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: This request is in conformance with the land use objective of the plan by placing industrial uses in rural areas only when it is agriculturally-oriented, dependent upon a nature resource, or as part of an appropriate expansion of an existing industrial area. Impact of the proposed development on community facilities: Municipal water and sewer services are not necessary for the proposed use. The proposed use should have minimal impact upon Hoover Road or 29th Street since the sand is to be pumped to the West Street plant, minimizing the number of trips generated by this use.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The extraction of sand on this site shall proceed in accordance with the operational plan as approved by the MAPC. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan.
2. In order to assist in the enforcement of the operational plan for this extraction use, the applicant shall have a copy of the approved operational plan posted in the sand extraction office.
3. Adjacent to the perimeter of the application area, a minimum 60-inch high fence shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the operational plan. Said fence shall be placed on steel posts that are not less than seven (7) feet tall. The posts shall not be set more than 16 feet apart. The fence shall be a minimum height of 60 inches and shall be of the following types of construction:
 - a) A 48-inch high or higher chain link fence with three (3) or more strands of barbed wire; or
 - b) A 48-inch high or higher solid metal or solid masonry fence with three (3) or more strands of barbed wire; or
 - c) A 48-inch or higher wood fence which may have cracks or openings not in excess of 5% of the area or such fence, with three (3) or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of four (4) inches apart and placed at the top of the fence and gate at an angle not to exceed 160 degrees facing away from the extraction.
4. The earth and sand shall be extracted to at least a minimum of six (6) feet below the normal water table, as determined by the Wichita-Sedgwick County Health Department.
5. To provide for bank stabilization for safety of future uses, the side slope of the extraction shall be no steeper than five (5) horizontal to one (1) vertical.
6. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
7. All the area included within the fence sand extraction operation shall be graded in accordance with a plan submitted to, and approved by, the Sedgwick County Bureau of Public Services.
8. The owner of the property shall be responsible for minimizing blowing dust from the site.
9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel, prior to the commencement of any sand extraction operation, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the application area.
10. The applicant shall submit a covenant satisfactory in form to the County Counselor and Sedgwick County Department of Public Services, prior to the commencement of any sand extraction operation, which authorizes the use of the extraction area as a detention storage facility for public drainage purposes.
11. The property shall be platted prior to the issuance of any zoning or building permits, except that necessary for the sand extraction operation.
12. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the county Zoning Resolution and amendments thereto.
13. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses, which will permit the establishment of sod cover to help, prevent erosion.
14. To minimize blowing soil in this area, overburden shall not be removed more than one year in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. The revised site plan shall divide the site into at least two areas indicating the sequence the areas are to be worked.
15. The storage of equipment or stockpiling of sand is not permitted closer than 100 feet to any public right-of-way or closer than 50 feet to any property line.
16. Nothing in the approval of this request shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the sand extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand, sand pumping and related equipment shall be removed from the subject site.

17. The approval of the Conditional Use is for a period not to exceed 10 years from the date of approval by the MAPC or the Board of County Commissioners [excavation will start within a period not to exceed a period of three years and will be completed within 10 years from the beginning of excavation] and subject operation is to cease after that period of time with all equipment and materials associated with the operation removed from the premises.
18. Hours of operation for the removal of overburden shall be limited from 6 a.m. to sunset. The same hours of operation shall apply if sand removal is conducted with use of non-electrical driven equipment. If sand is removed with the use of an electrical pump, sand extraction may operate 24 hours a day.
19. All on-site water and sewage facilities shall be approved by and constructed to the standards of the Wichita-Sedgwick County Health Department.
20. Any water wells needed to operate the facility must comply with the Water Well Construction Standards contained in Article 30 of the Kansas Department of Health and Environmental rules and regulations.
21. The applicant shall make the site available to the Wichita-Sedgwick County Health Department for the installation and management of groundwater monitoring wells.
22. The Wichita-Sedgwick County Health Department must approve any on-site storage of fuels or chemicals.
23. A drainage plan shall be submitted to and approved by the Sedgwick County Bureau of Public Works prior to starting the sand and gravel extraction. All of the area included within the fenced sand extraction operation shall be graded in accordance with the approved drainage plan.
24. The applicant shall obtain and maintain all applicable local, state and federal permits necessary for the sand and gravel extraction operation.
25. The applicant shall dedicate by separate instrument right-of-way for Hoover Street and 29th Street North pursuant to Article 7-201(H) of the Wichita-Sedgwick County Subdivision Regulations.
26. Any violation of the conditions approved, as a part of this request, shall render the Conditional Use null and void.

LOPEZ moved, **OSBORNE-HOWES** seconded the motion.

OSBORNE-HOWES "So they are in agreement with all of the staff comments?"

KROUT "We didn't write in the conditions the revised plan, we are just now talking to you about. We would recommend to you that you ask them for a revised plan, but it wasn't in the conditions that were written."

MARNELL "Are there any further comments? We have a motion and a second."

VOTE ON THE MOTION: The motion carried with 10 votes in favor. There was no opposition.

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10. **Case No. CON2000-00018** - Bay Le (Owner), Alma Rivas & Pedro Banuelos (Applicants) request a Conditional Use to allow the sale of used cars on property described as:

Lots 118 and 120, Block 4, Orme & Phillips Addition. Generally located at Broadway and Morris (1017 South Broadway).

BARRY CARROLL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicants are requesting a Conditional Use to permit used car sales on a platted ¼-acre tract of land. They indicate a desire to offer up to 15 vehicles for sale. This property is zoned "LC" Limited Commercial and is located north of Morris, on the westside of South Broadway (see map). Woven wire fencing surrounds the application area. Access to the site is from South Broadway and from an alley located to the west. Currently the site is developed with a two-story building. A jewelry repair shop is located on the first floor with an apartment on the second floor. The jeweler operating the first floor business resides in the upstairs apartment. The occupant will vacate the site should the Conditional Use be approved.

The property north of the application is a vacant lot and zoned "LC" Limited Commercial, the property to the south is a residence and it is zoned "LC" Limited Commercial; to the east is a vacant lot and is zoned "LC" Limited Commercial; to the west are residential houses and zoned "MF-18" Multi-Family.

Outdoor vehicle and equipment sales in the "LC", Limited Commercial, district is permitted if: the location is contiguous to a major street; visual screening of areas contiguous to residential zoning is provided; storage and display areas shall be paved with concrete, asphalt or other comparable material; outdoor lighting shall employ cut-off luminaries and shall be mounted at a height not exceeding one-half the distance from the neighboring lot unless evidence is shown that the light source is not visible from the neighboring lot; no noise amplification system projecting human voices or music shall be permitted if the music or voices can be heard within any residential zoning district located within 500 feet of the site; no repair work shall be conducted except in an enclosed building; and no body or fender work is permitted.

Code required parking is at the rate of one space per 500 square feet of building area, plus two spaces for the first 10,000 square feet of area used for sales, display and storage, plus one space per 10,000 square feet thereafter. This site contains approximately 4,250 square feet of sales, display and storage area and approximately 900 square feet of building area. Four parking spaces would be required. The applicants are showing four spaces (see site plan). It also appears that there is not much room for landscaping due to existing paving.

CASE HISTORY: The current site was platted as the Lee's Addition in 1882.

ADJACENT ZONING AND LAND USE:

NORTH:	"LC" Limited Commercial	Vacant lot
EAST:	"LC" Limited Commercial	Vacant lot
SOUTH:	"LC" Limited Commercial	Residential House
WEST:	"MF-18" Multi-Family Residential	Residential House

PUBLIC SERVICES: South Broadway is a four-lane arterial street with estimated traffic volumes of 10,878 trips per day. Water/sewer and other municipal services are provided to the site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this property as "commercial." The plan contains an objective which states: "Confine highway-oriented, auto-related and non-retail commercial uses to a limited number of urban areas, such as portions of Kellogg, Broadway, the CBD fringe, and other similar areas." There are two car sales lots in the two blocks north and one lot in the same block of the application area.

RECOMMENDATION: Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to the following conditions:

1. In addition to uses permitted in the "LC" Limited Commercial district, the site shall be limited to sales of used cars.
2. The vehicle sales lot shall be developed in accordance with the site plan, which shows the location for all spaces that will be used for customer parking and the storage or display of vehicles. The required customer and employee parking shall not be used for the display of vehicles. The applicants shall comply with the Landscape Ordinance.
3. All parking, storage and display areas shall be paved with concrete, asphalt or similar surface. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
4. No portable signs, and no temporary display signs are permitted, including the use of commercial flags, banners, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons.
5. There shall be no use of elevated platforms for the display of vehicles.
6. No noise amplification system projecting human voices or music shall be permitted if the music or voices can be heard within any residential zoning district located within 500 feet of the site.
7. No outside storage of salvaged vehicles or parts shall be permitted in association with this use.
8. Per City Engineering standards, contingent dedication of additional right-of-way shall be granted by separate instrument. The contingency shall be a determination made by the City Engineer that the additional right-of-way is necessary for improvements to Broadway.
9. Any violation of the conditions approved, as a part of this request, shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Most of the area is zoned "LC" Limited Commercial and the adjacent neighborhood to the east is zoned "MF-29" Multi-Family Residential. The character of the neighborhood is one of mixed zoning, vacant lots, business and residential uses.

2. The suitability of the subject property for the uses to which it has been restricted: This site is currently zoned "LC", Limited Commercial and is used as jewelry repair shop and residence. Both are permitted uses. Vehicle sales are permitted only by Conditional Use in the "LC" district. The site will retain its zoning whether the request is approved or not. It is possible to continue to use the site as zoned or other retail sales uses permitted by the current zoning would be allowed.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The adjacent properties to the north, south and east are zoned "LC" Limited Commercial. The property to the west is residential and is zoned "MF-29." A variety of uses are already permitted on the properties zoned "LC" and "MF-29." Minimal detrimental effects are anticipated from the proposed Conditional Use recommended for this request.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies this property as "commercial." The plan contains an objective which states: "Confine highway-oriented, auto-related and non-retail commercial uses to a limited number of urban areas, such as portions of Kellogg, Broadway, the CBD fringe, and other similar areas."
5. Impact of the proposed development on community facilities: With approval of this project, the projected impact on community facilities is minimal.

CARROLL "The current zoning on the property for this request for a Conditional Use is "LC" Limited Commercial on approximately a one-quarter acre tract of land near Broadway and Morris on the west side of the street. This property is currently being used as a jewelry store and the occupant lives upstairs. Should this be approved, the occupant will vacate and it will become the office.

There is a used car lot just behind this building to the south. The applicants do not own the vacant lot to the north. The applicant is here this afternoon to answer any questions you might have. They are wanting to offer up to 15 vehicles for sale. Four parking spaces would be permitted, which are provided on the site plan. The uses to the north, east and south are 'LC'; west is Multi-Family. Are there any questions?"

OSBORNE-HOWES "Clarification on recommendation No. 6?"

CARROLL "Just no outside microphone, amplification, etc."

OSBORNE-HOWES "Why not just no noise amplification system, period?"

CARROLL "Okay."

KROUT "I thought we did that. In fact I thought I commented on it and said that this was the 'Susan Osborne-Howes' amendment that we need to implement here. I'm sorry, we meant to put that in."

MARNELL "Are there any other questions of Barry? We will hear from the applicant."

ALMA RIVAS "Just to save time, this has been a long day, we are just basically wanting to have a small used car lot. I know that the lot is small. I will answer any questions that you have."

MARNELL "Are there any questions? Thank you. Is there anyone else that is a proponent for this item? Is there anyone here in opposition to this item?"

DALE SLAPE "We own the six lots to the north, toward Gilbert Street. On our lots, we have the law offices of Slape and Howard. We oppose this request for two reasons. The first one can be summed up real easily. This lot is way too small. The only reason for asking for a car lot on Broadway is because of the frontage on Broadway. You are looking for exposure. But if you look at the little map that is provided on your staff report, you will see that the frontage on Broadway is entirely blocked by either the building, which is right up on the sidewalk, or the four spaces that are provided for customers or staff. So you are going to wind up with a building, you are going to wind up with some cars in front that are not for sale, and then cars in the back that are for sale.

This simply makes no sense to begin with and it again points to the fact that this lot is just too small. Given the parking behind these cars which blocks the frontage on Broadway, what you are going to wind up with is the customers driving up and down the alley, blocking and parking in that alley when you have more than one or two customers and we are concerned about that. We are also concerned about people parking on that empty lot to the north, which we own.

But more than just the fact that it is too small, we are concerned about the development of South Broadway. As was pointed out previously, there is an existing car lot at Morris on the corner. There is another car lot up here on this corner (indicating), so within half a block to the north and half a block to the south you have car lots. We do not have any problem with them and it is primarily because there is a side street there where people can drive by, view the cars and there is adequate room to park. This place is just too small. We have been there since 1993, and every time we have a business, and there was formerly a pawn shop and we have had other things there, but whenever there were customers there and it gets a little crowded in that front parking, what happens is that they either try to park on Broadway and block the right lane, which is a safety hazard, or they are pulling around, parking in the alley or coming over and parking on our property.

Really, I think a better use for this property in the planning sense would be a small office. Either a professional office or service office; something where there is adequate parking and you are not moving cars in and out. If we fill this space up with cars you are going to need to move cars as they sell, move new cars in, and we see all kinds of problems with this little bitty area. There just isn't room. And two car lots are enough. Do you have any questions?"

LOPEZ "You stated that you owned the five lots immediately to the north?"

SLAPE "Yes, immediately to the north, including the vacant lot and then we own all of the lots up to Gilbert Street, to the north, and that is a law office located on that property."

LOPEZ "Have you made an attempt to purchase the lot to the south from the owner, Bay Le?"

SLAPE "No, we have not made a bid on that yet."

WARREN "What kind of businesses are along Broadway there that you own?"

SLAPE "It is a law office, Slape and Howard, Chartered. We have all of this area here (indicating), and that is a law office, and then immediately to the south, we have two residential properties and then there is another commercial property here. It is a camera shop. And then, of course, another car lot. We are concerned about the development of South Broadway. We would rather it would be business and professional as opposed to a series of car lots, especially when there is insufficient room."

MARNELL "Thank you. Is there anybody else to speak on this item? Would the applicant like to have rebuttal?"

RIVAS "I know that the concern is that this is a very small lot, but that is our intention. We do not want a great big car lot since there are some car lots along this street anyway."

I know that car lots want to be concentrated in one area, which is why we are asking for this. It isn't on Broadway, and we are not only targeting our customers to be the ones in that area, but we are also targeting the Hispanic community since we can provide them with the language since we are bilingual. We can help them there, too.

As far as moving cars in and out of the lot, I don't think it would be that much of a problem because we are not planning on having very many cars in the first place. If it was a huge lot I would see why that would be a problem, but there are four parking spaces in the front and then there is about probably five or six in the back. I did see that the main concern right here is that it is very small. That is our intention. We want to keep it small because of the other car lots in this area anyway. Are there any questions?"

LOPEZ "On your site plan, right up against the sidewalk you have a drawing that says 'driveway'. What is that? Can you go back to the street view? You have the word driveway written there. What is that? Is that driveway already there, or is it proposed?"

RIVAS "Yes, it is already there."

LOPEZ "Then the sidewalk has to come through there?"

RIVAS "The driveway is right next to the building, where the parking spaces are."

LOPEZ "The whole thing is paved from the grassy area to the back?"

RIVAS "No. The lot itself is not paved, which we are planning on doing, or graveling, or something. The only thing that is paved is this area right here, (indicating) and that is where the driveway is, which would be about right there."

LOPEZ "The rest to the south isn't paved?"

RIVAS "The south is where the residential is. The lot is to the west. This is where the lot is, behind this fence (indicating)."

MICHAELIS "You have to go in and out where he is pointing, Richard."

RIVAS "Right."

MICHAELIS "That is the only way in and out."

LOPEZ "Oh, so your lot is going to be behind it?"

RIVAS "Right."

LOPEZ "So how do you get into it, from the back or the front?"

RIVAS "Both. There is a running fence in the front and in the back. There is a little gate right there, but this also opens up almost all the way (indicating). The back is the same way."

OSBORNE-HOWES "So you are saying that you can also exit or enter off the alley?"

RIVAS "Yes."

MARNELL "Are there any further questions of the applicant? Okay, thank you."

KROUT "I need to say, Commissioners, that a couple of weeks ago, when I reviewed this site plan with Dale, we agreed that the site plan has very little relationship to reality, and it is not to scale. It will not meet the standards of the traffic engineer. The only way to make something like this work is to put a driveway along most of the grassed area to the side of the building and then if you park behind the building you are halfway into the lot before you would have any cars to display. This just isn't a 50-foot wide lot. I really think that before you would make a recommendation to approve, you ought to at least see a revised site plan. The applicant, the owner of this property, also needs to understand how the property is going to be limited by our typical standards for driveways and parking and all, and whether or not this is really what they want to do with the property, when all is said and done."

I didn't look at it the last time enough to tell how much of a problem it was going to be, but you can't fit four parking spaces in 20 feet, and the City Traffic Engineer won't permit whatever it is. The area looks sort of like a drive in front of this building with a narrow area to the left to be used as the access to and from off-street parking and the rest of this lot. This is really not fully cooked."

HENTZEN "Marvin, I agree with what you are saying, but how could you come up with a recommendation to approve? I was astounded. I don't think you have ever recommended approval of a car lot."

MILLER "That's not true."

HENTZEN "I wanted to say this to you about the 50-foot lot, if we do approve this, the next guy is going to come by and all he owns is a driveway or an easement and he needs to show two cars. They have enough car lots in that block. I hate to go against what you recommend."

KROUT "The Comprehensive Plan says that where we already have car lots, and we certainly have a lot on South Broadway, that that is an area where it is difficult to recommend against more car lots and it probably makes sense for some reason why they are there. That is why we have recommended approval of some, including some others on South Broadway."

MICHAELIS "In the essence of time, I am going to make a motion. I don't really care whether there is a revised site plan or not, I don't think this is an appropriate location. I am kind of like Commissioner Hentzen, I was surprised that it got staff approval and has gotten this far along."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the zoning, uses and character of the neighborhood, I move that we recommend to the governing body that the request be denied.

MILLER "I would like to respond just real quickly. We have recommended denial on several car lots that have come through and this Commission has approved every one of those. In fact, we were looking at changing the Code to permitting car lots in 'LC' as a use by right because this Commission has been approving them so regularly."

Given the fact that there are two others here, we felt like that based on what had been happening here that it made sense to start going with the flow. Even though we did have concerns about the size, this Commission has been approving these on a regular basis. I don't care what you do on this one, but I am just trying to justify why we recommended approval on this particular one."

MARNELL "Well, Dale, you aren't going to make us a tea leaf reader, we can see."

JOHNSON "I am curious of how we can determine what the parking requirements are or anything. That is a Central Inspection issue. It looks to me like we have 450 square feet of office, which I think requires two parking spaces. I think I could park two cars legally with the standards, on this lot."

KROUT "Yes, you can."

JOHNSON "So I don't know why everybody is picking it apart that it won't work. Yeah, it may not hold many cars, but it would work. So, I am not going to support the motion. I guess we don't have a second."

MARNELL "There is no motion on the table, is there? Did you make a motion?"

MICHAELIS "Yes."

PLATT seconded the motion.

OSBORNE-HOWES "I don't want to sound 'preachy', but I think we have to really be careful if we start denying something if we say that there is already enough of that type of business close by. I think in the interest of free enterprise that wouldn't be good. I would certainly like to see a deferral."

KROUT "I think that we can't say it wouldn't work on here, but it certainly would be limited and it may not meet the applicant's needs."

WARREN "I don't think we need to critique their wisdom to be in this business at this location. I think we would get laughed out of court. We all just saw the Judge Greg Waller case. This is a good application zoning-wise and the use of this property. Whether it is proper, whether it makes economic sense or whether it fits the free enterprise system, I don't think it is up to us. I don't think we have legal, justifiable grounds to deny this request. I haven't heard anything that say we can legally deny this request."

MICHAELIS "It is no different from any other case."

SUBSTITUTE MOTION: That the Planning Commission recommend to the governing body that the request be approved, subject to staff comments and a revised site plan.

WARREN moved, **JOHNSON** seconded the motion.

MARNELL "We have a substitute motion. Is there any discussion?"

WARNER "Now, what is the substitute motion?"

MARNELL "The substitute motion is to approve the Conditional Use subject to staff comments and an acceptable revised site plan."

MICHAELIS "If we are going to do that, it makes more sense to defer it so we can see it before we make a recommendation on it. Can I make a substitute substitute motion?"

WARREN "Sure."

MICHAELIS "Maybe the simplest thing to do is for everyone to withdraw their motions and entertain a motion for deferral. I will do that."

WARREN "I will withdraw my motion, too."

MOTION: That the item be deferred for 2 weeks to the June 29th meeting.

JOHNSON moved, **OSBORNE-HOWES** seconded the motion, and it carried unanimously.

11. **Case No. A 00-08** - Unilateral annexation by the City of Wichita of property generally located east and west of 143rd Street East and north and south of Harry (Phase III).

KROUT "This is the last phase of this for a while, we hope, out in the far east part of Wichita of what turned out to be a three phase annexation. This is the last phase of the area around Harry and 143rd Street East. The City Council has a plan to annex that and we hope that you will find that it is compatible with the Comprehensive Plan."

MARNELL "Is there any discussion?"

MOTION: That the Metropolitan Area Planning Commission find the unilateral annexation compatible with the adopted Comprehensive Plan.

OSBORNE-HOWES moved, **LOPEZ** seconded the motion, and it carried unanimously (10-0).

12. **Set public hearing date July 13, 2000 at 1:00 p.m., located in the MAPD large conference room, to consider adoption of the Hilltop Neighborhood Revitalization Plan.**

KROUT "I don't know whether we passed out the Hilltop Neighborhood Plan, but if you remember, you had a briefing by Ray Ontiveros on the Hilltop Plan. He went over the major goals and you saw the site plans and all, and we do now have

the final plan from the consultants, and we would like for you to establish a period of time for July 13. We will advertise so that you can have a hearing and we can invite people to comment on the idea of adopting this as an element of the Comprehensive Plan, like we did with the Core Area plan, the Central City Plan."

MOTION: That a hearing date be set for July 13, 2000 at 1:00 p.m. in the MAPD conference room to consider adoption of the Hilltop Neighborhood Revitalization Plan.

LOPEZ moved, **JOHNSON** seconded the motion, and it carried unanimously (10-0).

13. **Other Matters**

Return to Item No. 2 DR 99-10, Wireless Communication

KROUT "I think everyone spoke on this, so you can close the public hearing."

MARNELL "I think we will reopen the public hearing. I think we had, however, at that point, heard from all of the speakers and they were all given an opportunity to speak and we had brought it back to the Commission before we moved on. Is that the understanding of everyone on the bench? Okay, thank you.

I think there are enough open items on this plan, although I would again reiterate some of the comments that others have made without belaboring the point that staff has done a great job of getting this thing close. I think we have some minor fine tuning, and staff, I think, would recommend that we defer this for four weeks and give them the opportunity to get the input from some folks that weren't included the first time and see whether that makes significant changes.

I have some comments that I would like to visit with the staff about and Marvin would welcome that, so if there is anybody else on the Commission that would like to do that, we need to know so we can get them included. And I think we can get this thing to a plan that we approve."

OSBORNE-HOWES "I just want to make sure that since we are getting some feedback from some businesses that weren't included, that we also get some feedback from some of the neighborhood residential representatives that were involved before, too."

MARNELL "I believe we have had that."

OSBORNE-HOWES "No. They were at the table with all of the relevant, interested parties at the time. We have some new parties with some new interests, so I am going to suggest that we get neighborhood input again."

MARNELL "If they are new parties, that would be great."

OSBORNE-HOWES "No. I am suggesting that we get neighborhood input again. That was the point made by the chair of the committee."

MARNELL "I think that could go on forever, but you can make that in a motion if you would like."

OSBORNE-HOWES "That is my request."

MARNELL "Is that a motion to have them added in some way, because we have closed the public hearing."

OSBORNE-HOWES "I don't want to make....if we are going to defer this, and you are saying that you would like to have feedback from the new people that are involved with the new issues, I think it makes sense to have all of the committee members get information again, and that includes the neighborhood representatives."

MARNELL "But we are not taking it back to the committee, it is just going back to staff."

OSBORNE-HOWES "I know that, but they ought to be able to give feedback, too. What are we asking for here, just asking for the feedback from the new members so that it can be changed without the committee that wrote this having any input in it? I don't think so."

MARNELL "They will bring that back via the staff and we can review it. That was Marvin's suggestion to add that the staff seek that comment because they were not known parties; they were not there. The other parties were there. It is not reopening the whole thing. If there is anybody on the Commission that wants to get with staff can get with staff."

MOTION: That Item DR 99-10, the Wireless Communication amendments be deferred for four weeks in order to get some more comments from staff.

MICHAELIS moved, **MARNELL** seconded the motion.

JOHNSON "Is the public hearing on this closed then?"

MARNELL "Yes, we have closed the public hearing."

JOHNSON "That maybe ought to be part of the motion."

AMENDED MOTION: That Item DR 99-10, the Wireless Communication amendments be deferred for four weeks in order to get some more comments from staff, and the public hearing be closed.

WARREN "We probably ought to close the public hearing and then take action."

MARNELL "That is probably the proper way."

WARREN "Let's make a motion to close the public hearing and then we will go ahead and take the motion in our regular session, I guess."

MICHAELIS "But can we do that, though? I mean if we come back and say that staff has some more comments, do we have to have a public hearing, or is this it?"

MARNELL "I am not positive, but I don't think so. They will reverse us if they think so."

WARREN "Normally we close the public hearing and then go ahead and take action."

PLATT "I think we have a good point made here that disturbs me. One of the reasons we are talking about delaying this is that we are going to seek input from people who didn't know we were having a public hearing today. It seems to me that if we select those people who didn't know we were having a public hearing and ask their input, we are not quite doing the job that a public hearing ought to do. Particularly since people raised the question to begin with that was this ever advertised as a public hearing.

I think Commissioner Osborne-Howes sort of makes a good point that the neighborhood somehow ought to have some comment on the facts. Apparently part of the group that didn't have a chance to give input, or at least when they spoke up here said that they didn't really work in real commercial areas downtown, that they are sort of out in neighborhoods. And they talked about people in their homes having access to lap tops. It seems to me that we are talking about things that ought to be looked at. I am a little disturbed if we close the public hearing and then allow a few select folks to have input."

WARREN "Are you suggesting that we extend this public hearing?"

PLATT "I don't know. It seems to me that in four weeks that we ought to let people who want to make comments."

WARNER "Explain to me again who is invited to make these suggestions to staff?"

MARNELL "As I understood it from my discussion with Marvin, it raised some questions that he was unaware of and they will probably seek some clarification on some of that to understand some of the comments made at the staff. It is not going to be another public hearing."

WARNER "Will it be in the form of a meeting with certain invited participants?"

KROUT "Here was my thought. It was that you got some specific input from some people, and we have an obligation, I think, to sit down with each one of those who indicated something they had a problem with, and make sure that we understood it and they have an opportunity to come back to you with any revised language.

I do think you ought to continue the public hearing for new information that you haven't heard already, and if someone becomes aware of the hearing that hasn't been, but mostly because you may have something new on the table and I think you need to give someone the opportunity to comment on it if we change some standards that are maybe on the table today.'

WARNER "Well, would it be appropriate to...well, I guess it wouldn't if you didn't invite these people that were involved in the beginning. I was just thinking that the neighborhood deal is okay if they were aware of it or were invited to participate."

KROUT "As far as the neighborhood goes, in the beginning of this process, the Wichita Independent Neighborhoods was more involved in it, and there were a number of people, and then it kind of dwindled down over a several month period. I am sure we sent out a notice to them about this hearing, so I know that they had an opportunity, they have reviewed all five or six of these drafts, however many we have had out there. If it is the Planning Commission's desire, we can contact them and just let them know that it is being continued if they have any comments."

WARNER "Well, then, maybe we should just not close the public hearing, just continue to get the input we need to come up with the final plan and then make sure that all of the people that were involved at the beginning are aware that we are going to do the last hearing and if they want input, that is their opportunity."

MICHAELIS "That was the intent of my original motion. The one to defer only, to continue the hearing."

MARNELL "Is there any comment on the motion?"

VOTE ON THE ORIGINAL MOTION: The motion carried with 10 votes in favor. There was no opposition.

MOTION: That the Metropolitan Area Planning Commission adjourn.

WARREN moved, **LOPEZ** seconded the motion, and it carried unanimously (10-0).

The meeting was formally adjourned at 6:15 p.m.

State of Kansas)
Sedgwick County) ss

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2000.

Marvin S. Krout, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)